

No. 14398

United States
Court of Appeals
for the Ninth Circuit

PETER DESIMONE, JOHN STEPICH and
HAROLD HOPKINS,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
Western District of Washington,
Northern Division.

FILED

OCT 26 1954

THOMAS P. O'BRIEN
Clerk

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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Attorney for Appellants.

CHARLES P. MORIARTY, and
RICHARD D. HARRIS,
1012 U. S. Courthouse,
Seattle, Washington,
Attorneys for Appellee,



United States District Court, Western District of
Washington, Northern Division

No. 48570

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PETER DESIMONE, JOHN STEPICH,
HAROLD HOPKINS, RUSSELL W. FEL-
TON, and BERT DePIERRIS,

Defendants.

INDICTMENT

The Grand Jury charges:

Count I.

That during the period commencing June 30, 1951, and ending May 8, 1952, at Seattle, in the Northern Division of the Western District of Washington, Peter Desimone, John Stepich, Harold Hopkins, Russell W. Felton and Bert DePierris did unlawfully conspire to and with one another, and with divers other persons to the Grand Jury unknown, to commit an offense against the United States, to wit, to wilfully and unlawfully carry on the business of a retail liquor dealer, and in so doing to wilfully fail to pay the tax required by law, contrary to the provisions of Title 26, U.S.C., Section 3253; and in furtherance of said conspiracy the said defendants, for the purpose of effecting the

objects of the conspiracy, did commit the following:

Overt Acts

1. On or about July 1, 1951, the said defendants, using the name White Center Athletic Club, a corporation controlled by them, and of which thereof the defendants were officers, took over and equipped and occupied the premises and the building at 9616 17th Avenue S.W., Seattle, Washington, ostensibly as a social club, but in truth and in fact as a place for the sale of liquor at retail.

2. On or about January 18, 1952, the defendants herein, using the name of White Center Athletic Club, purchased and stored on the premises at 9616 17th Avenue S.W., Seattle, Washington, 53 bottles of liquor.

3. On or about March 1, 1952, the said defendants herein, using the name of White Center Athletic Club, purchased and stored on the premises at 9616 17th Avenue S.W., Seattle, Washington, 152 bottles of liquor.

4. On or about March 12, 1952, the said defendants herein, using the name of White Center Athletic Club, purchased and stored on the premises at 9616 17th Avenue S.W., Seattle, Washington, 56 bottles of liquor.

5. On or about January 16, 1952, at Seattle, Washington, the defendant Bert DePierris sold whiskey by the glass to one Ted King.

6. On or about January 16, 1952, at Seattle, Washington, the defendant Bert DePierris sold whiskey by the glass to Berch D. West.

7. On or about February 15, 1952, at Seattle, Washington, the defendant Bert DePierris sold whiskey by the glass to Berch D. West.

8. On or about May 6, 1952, at Seattle, Washington, the defendant Russell W. Felton sold whiskey by the glass to H. E. Daggett.

9. On or about May 7, 1952, at Seattle, Washington, the defendant Russell W. Felton sold whiskey by the glass to H. E. Daggett.

All in violation of Title 18, U.S.C., Section 371.

A True Bill.

/s/ S. J. CALDERHEAD,

/s/ J. CHARLES DENNIS,

United States Attorney;

/s/ RICHARD D. HARRIS,

Asst. United States Attorney.

(Bail \$500, each.)

[Endorsed]: Filed Sept. 26, 1952.

[Title of District Court and Cause.]

BILL OF PARTICULARS

Comes Now the above-entitled defendants and by and through their attorney, John F. Dore, moves

this Honorable Court for an order requiring plaintiff to furnish a Bill of Particulars in the following:

1. Specify in what manner and where the named defendants did unlawfully conspire with one another.

2. Specify and name the "divers other persons to the grand jury unknown."

3. As to Overt Act No. 1, state more specifically exactly which defendants controlled the corporation named the White Center Athletic Club.

4. And also as to Overt Act No. 1, specify which, if any, of the defendants were officers of this corporation.

5. As to Overt Act No. 2, specify which defendant or defendants, if not all of the defendants herein, purchased and stored on the premises 53 bottles of liquor.

6. As to Overt Act No. 3, specify the name of the defendant or defendants who used the name of the White Center Athletic Club to purchase 152 bottle of liquor.

7. As to Overt Act No. 3, name the defendant or defendants who stored on the premises 152 bottles of liquor.

8. As to Overt Act No. 4, specify the name of the defendant or defendants herein who used the name of the White Center Athletic Club to purchase 56 bottles of liquor.

9. Further as to Overt Act No. 4, specify and name the defendant or defendants who stored said 56 bottles of liquor on the premises and also name the place where said liquor was stored, if any.

10. As to Overt Act No. 6, specify where the defendant Bert DePierris sold whiskey by the glass to Berch D. West.

11. As to Overt Act No. 6, further specify approximately the exact time when the defendant Bert DePierris allegedly sold whiskey by the glass to Berch D. West.

12. As to Overt Act No. 6, and also No. 7, specify whether Berch D. West is a regular employee of the Washington State Liquor Board or whether he is a Federal employee in this instance.

13. As to Overt Act No. 7, specify approximately the exact time and place where Bert DePierris allegedly sold whiskey by the glass to Berch D. West.

14. As to Overt Act No. 8, specify approximately the exact time and place where Russell W. Felton, a defendant, allegedly sold whiskey by the glass to H. E. Daggett.

15. Further as to Overt Act No. 8, specify whether H. E. Daggett is a regular employee of the Washington State Liquor Board or whether he is a Federal employee in this instance.

16. As to Overt Act No. 9, specify approximately the exact time and the place where the defendant

Russell W. Felton, allegedly sold whiskey by the glass to H. E. Daggett.

/s/ JOHN F. DORE,
Attorney for Defendants.

Receipt of copy acknowledged.

[Endorsed]: Filed Nov. 21, 1952.

[Title of District Court and Cause.]

MOTION TO STRIKE AND TO DISMISS

Come now the above-entitled defendants, by and through their attorney John F. Dore, and move this Honorable Court for an order striking from the indictment certain language, to wit: On Page 1, line 18 of the indictment reading "and with divers other persons to the Grand Jury unknown," for the reason that such language is surplussage, prejudicial and unfair to the defendants

Defendants further move that if said language is not readily subject to being obliterated or deleted from said indictment, that the indictment be dismissed and that the grand jury be required to consider a new and proper indictment.

/s/ JOHN F. DORE,
Attorney for Defendants.

Receipt of copy acknowledged.

[Endorsed]: Filed Nov. 24, 1952.

[Title of District Court and Cause.]

MOTION TO SUPPRESS

Come Now the above-entitled defendants by and through their attorney John F. Dore, and move this Honorable Court for an Order suppressing the evidence seized in this case by both the State and Federal authorities, for the reason that the seizure of said evidence was unlawful, against the will of the defendants, and was contrary to the Constitution of the United States of America. That said property was seized contrary to the will of the petitioners herein and without a search warrant and without lawful means.

Petitioners further move that said evidence shall not only be suppressed, but shall be returned to them. Petitioners further moves that any evidence or testimony concerning this evidence which has been unlawfully seized be quashed and denied admission in the trial of the defendant petitioners.

In support of this motion, affidavits will be filed later.

/s/ JOHN F. DORE,
Attorney for Petitioners.

Copy served.

[Endorsed]: Filed Dec. 6, 1952.

[Title of District Court and Cause.]

STIPULATION WAIVING TRIAL BY JURY

It Is Hereby Stipulated between the plaintiff, United States of America, and Peter Desimone, John Stepich, Harold Hopkins, Russell W. Felton and Bert DePierris, defendants, and George J. Toulouse, Jr., and John Spiller, their attorneys, that trial by jury in the above-entitled cause be waived and that said cause be tried to the Court.

Signed at Seattle, Washington, this 21st day of April, 1954.

UNITED STATES OF
AMERICA,
Plaintiff,

By /s/ CHARLES P. MORIARTY,
United States Attorney;

/s/ RICHARD D. HARRIS,
Asst. United States Attorney.

/s/ PETER DESIMONE,
/s/ JOHN F. STEPICH,
/s/ HAROLD HOPKINS,
/s/ RUSSELL W. FELTON,
/s/ BERT DePIERRIS,
Defendants.

/s/ GEORGE J. TOULOUSE, Jr.,
/s/ JOHN SPILLER,
Attorneys for Defendants.

It Is So Ordered this 21st day of April, 1954.

/s/ JOHN C. BOWEN,

United States District Judge.

[Endorsed]: Filed April 21, 1954.

[Title of District Court and Cause.]

MOTION FOR DISMISSAL OF INDICTMENT

The several defendants above named move that the indictment be dismissed upon the following grounds:

1. The indictment does not state facts sufficient to constitute an offense against the United States.

2. The indictment is vague, indefinite and uncertain and does not fully inform the defendants of the charge made against them.

3. The indictment is bad for ambiguity in that it is impossible to determine from the language of the charging count whether it was in connection with the alleged conspiracy or with the alleged carrying on of the business of a retail liquor dealer that there was an alleged failure to pay the tax required under title 26, U.S.C., section 3253.

4. There is no such offense as unlawfully conspiring "to carry on the business of a retail liquor dealer, and in so doing" (that is to say in so conspiring) "to wilfully fail to pay the tax required by" title 26, U.S.C., section 3253.

5. There is no such offense as unlawfully conspiring "to carry on the business of a retail liquor dealer, and in so doing" (that is to say in carrying on the said business) "to wilfully fail to pay the tax required by" title 26, U.S.C., section 3253.

6. The patent ambiguity in the charging count of the indictment will prevent the court and jury from dealing with the charge against the defendants with certainty, and will seriously handicap the defendants, and each of them, in making their defense thereto.

7. The charging count of the indictment is not sufficient in form or substance that the defendants, or any one of them, could thereafter plead a judgment of conviction in bar to another prosecution for the same offense.

/s/ GEORGE J. TOULOUSE, JR.,

/s/ JOHN SPILLER,

Attorneys for Defendants.

[Endorsed]: Filed April 21, 1954.

[Title of District Court and Cause.]

MOTION TO EXTEND THE TIME FIXED BY
THE COURT FOR THE SETTLEMENT
AND SIGNING OF SPECIAL FINDINGS
OF FACT AND SENTENCE

Come now the defendants and move the Court for an order extending the time of the entry of

the special findings of fact in the above-entitled matter, heretofore fixed by the Court to be May 10, 1954, to May 24, 1954.

This Motion is based on the records and files herein and the affidavit of George J. Toulouse, Jr., appended hereto.

JOHN SPILLER, and

GEORGE J. TOULOUSE, JR.,

Attorneys for Defendants.

State of Washington,
County of King—ss.

George J. Toulouse, Jr., being first duly sworn, on oath deposes and says:

That he is one of the attorneys for the above-named defendants; that he has requested the court reporter of the above-entitled court to prepare a transcript of the record of proceedings herein in order that it might be available to counsel for the preparation of special findings of fact, as provided by the rules in criminal procedure; that said court reporter has advised your affiant that she will be unable to prepare a transcript of the record and have it available for examination by counsel prior to May 10th, 1954. That counsel feel that a transcript of the record is absolutely necessary in this case in order to insure an accurate preparation of the special findings of fact to which the defendants are entitled.

Further, your affiant sayeth not.

/s/ GEORGE J. TOULOUSE, JR.

Subscribed and sworn to before me this 3rd day of May, 1954.

/s/ JOHN SPILLER,

Notary Public in and for the State of Washington,
Residing at Seattle.

Receipt of copy acknowledged.

[Endorsed]: Filed May 3, 1954.

[Title of District Court and Cause.]

REQUEST FOR SPECIAL FINDINGS OF FACT

Pursuant to rule 23, Federal Rules of Criminal Procedure, the defendants above named, by and through their attorneys of record, George J. Toulouse, Jr., and John Spiller, respectfully request the Honorable John C. Bowen, the judge of the above-entitled court before whom the above-entitled cause was tried without a jury, to make and enter herein special findings of fact from the evidence respecting the following particulars: (1) the specific design, plan, purpose or object of the agreement, concert or cooperation among the participants constituting an essential element of the conspiracy as alleged in the indictment herein; (2) the date or approximate date when the conspiracy alleged in

the indictment was originally formed; (3) which of the defendants above named originally entered into or participated in the formation of the conspiracy alleged in the indictment; (4) which other persons, known or unknown, originally entered into or participated in the formation of the conspiracy alleged in the indictment; (5) which of the defendants above named joined the conspiracy alleged in the indictment subsequent to the original formation thereof, and the date or approximate date of each such subsequent joining; (6) which other persons, known or unknown, joined the conspiracy alleged in the indictment subsequent to the original formation thereof, and the date or approximate date of each such subsequent joining; (7) the several acts of each of the defendants above named proving or tending exclusively to prove participation by the respective defendants in the conspiracy alleged in the indictment; (8) the several overt acts of each of the defendants above named alleged in the indictment as to which there has been a failure of proof.

/s/ GEORGE J. TOULOUSE, JR.,

/s/ JOHN SPILLER,

Attorneys for Defendants.

Receipt of copy acknowledged.

[Endorsed]: Filed May 17, 1954.

[Title of District Court and Cause.]

SPECIAL FINDINGS OF FACT

Pursuant to the request of the defendants above named, made by their attorneys of record, George J. Toulouse, Jr. and John Spiller, under rule 23 of the Federal Rules of Criminal Procedure, the undersigned Judge of the above-entitled court, makes the following special findings of fact from the evidence adduced and admitted in the course of the trial of the above-entitled cause:

I.

That the said evidence neither proves nor tends exclusively to prove that there was a specific design, plan, purpose or object of any agreement, concert or cooperation among the said participants constituting an essential element of conspiracy as alleged in the indictment herein.

II.

That the said evidence neither proves nor tends exclusively to prove the date or approximate date when a conspiracy as alleged in the indictment herein was originally formed.

III.

That the said evidence neither proves nor tends exclusively to prove which of the defendants above named originally entered into or participated in the formation of a conspiracy, as alleged in the indictment herein.

IV.

That the said evidence neither proves nor tends exclusively to prove which other persons, known or unknown, originally entered into or participated in the formation of a conspiracy, as alleged in the indictment herein.

V.

That the said evidence neither proves nor tends exclusively to prove which of the defendants above named joined a conspiracy, as alleged in the indictment herein, subsequent to the original formation thereof, or the date or approximate date of any such subsequent joining.

VI.

That the said evidence neither proves nor tends exclusively to prove which other persons, known or unknown, joined a conspiracy, as alleged in the indictment herein, subsequent to the original formation thereof, or the date or approximate date of any such subsequent joining.

VII.

That the said evidence neither proves nor tends exclusively to prove that the defendant Peter Desimone, in concert with one or more of the other defendants above named, or in concert with any other person or persons, known or unknown, committed any overt act whatsoever in pursuance of a conspiracy, as alleged in the indictment herein.

VIII.

That the said evidence neither proves nor tends exclusively to prove that the defendant John Step-

ich, in concert with one or more of the other defendants above named, or in concert with any other person or persons, known or unknown, committed any overt act whatsoever in pursuance of a conspiracy, as alleged in the indictment herein.

IX.

That the said evidence neither proves nor tends exclusively to prove that the defendant Harold Hopkins, in concert with one or more of the other defendants above named, or in concert with any other person or persons, known or unknown, committed any overt act whatsoever in pursuance of a conspiracy, as alleged in the indictment herein.

X.

That the said evidence neither proves nor tends exclusively to prove that the defendant Russell W. Felton, in concert with one or more of the other defendants above named, or in concert with any other person or persons, known or unknown, committed any overt act whatsoever in pursuance of a conspiracy, as alleged in the indictment herein.

XI.

That the said evidence neither proves nor tends exclusively to prove that the defendant Bert De-Pierris, in concert with one or more of the other defendants above named, or in concert with any other person or persons, known or unknown, committed any overt act whatsoever in pursuance of a conspiracy, as alleged in the indictment herein.

XII.

That there has been a complete and utter failure of proof with respect to the allegations set forth in overt acts numbered 1, 2, 3, 4 and 5, as set forth in the indictment herein.

XIII.

That the alleged overt acts numbers 6, 7, 8 and 9, as set forth in the indictment herein, together with any and all other overt acts disclosed by the evidence herein, taken individually or together, are not inconsistent with the hypothesis of innocence on the part of each and every one of the defendants above named of the charge of conspiracy, as set forth in the indictment herein.

Done In Open Court this day of May, 1954.

.....,

Judge.

Presented by

/s/ JOHN SPILLER,

Attorney for Defendants.

Receipt of copy acknowledged.

[Endorsed]: Filed May 17, 1954.

[Title of District Court and Cause.]

GENERAL FINDING AND SPECIAL FINDINGS OF FACT

General Finding

The above-entitled Court finds the defendants Peter Desimone, John Stepich, Harold Hopkins, Russell W. Felton and Bert DePierris guilty as charged in Count I of the Indictment.

Special Findings of Fact

The above-entitled Court finds the following:

I.

That during the period commencing June 30, 1951, and ending May 8, 1952, at Seattle, in the Northern Division of the Western District of Washington, and within the jurisdiction of this Court, Peter Desimone, John Stepich, Harold Hopkins, Russell W. Felton and Bert DePierris did unlawfully conspire to and with one another, and with divers other persons (to wit, Charolette Fulford) to commit an offense against the United States, to wit, to wilfully and unlawfully carry on the business of a retail liquor dealer, and in so doing to wilfully fail to pay the tax required by law, contrary to the provisions of Title 26, U.S.C., Sec. 3253.

II.

That Sec. 3253 of Title 26, U.S.C., and Sec. 371 of Title 18, U.S.C., were in full force and effect at Seattle, in the Northern Division of the Western

District of Washington during the period commencing June 30, 1951, and ending May 8, 1952.

III.

That in the furtherance of the said conspiracy, and for the purpose of effecting the objects of the said conspiracy, the defendants Peter Desimone, John Stepich, Harold Hopkins, Russell W. Felton and Bert DePierris did commit the following overt acts that were alleged in the Indictment:

1. That on or about July 1, 1951, Peter Desimone, John Stepich and Harold Hopkins, using the name White Center Athletic Club, Inc., a corporation, controlled by them, and of which thereof the said Peter Desimone, John Stepich and Harold Hopkins were officers, took over and equipped and occupied the premises and building located at 9616 17th Ave. S.W., Seattle, Washington, ostensibly as a social club, but in truth and in fact as a place for the sale of liquor at retail.

2. That on or about January 18, 1952, Bert DePierris, while John Stepich was present, sold and stored liquor at the said White Center Athletic Club, Inc., located at 9616 17th Ave. S.W., Seattle, Washington, the amount of liquor stored at said time and place being approximately 150 bottles belonging to the said White Center Athletic Club., Inc.

3. That on or about March 1, 1952, the said defendants Peter Desimone, John Stepich, Harold Hopkins, Russell W. Felton and Bert DePierris, using the name White Center Athletic Club, Inc.,

stored on the premises located at 9616 17th Ave. S.W. Seattle, Washington, approximately 50 bottles of liquor which they claimed belonged to the Dr. Edward Lincoln Smith Orthopedic Guild, but which in fact belonged to said defendants.

4. That on or about March 12, 1952, the said defendants Peter Desimone, John Stepich, Harold Hopkins, Russell W. Felton and Bert DePierris, using the name White Center Athletic Club, Inc., stored on the premises located at 9616 17th Ave. S.W., Seattle, Washington, approximately 150 bottles of liquor belonging to said defendants.

5. That on or about January 16, 1952, at the said White Center Athletic Club, Inc., located at 9616 17th Ave. S.W., Seattle, Washington, the defendant Bert DePierris sold whiskey by the glass to Berch D. West.

6. That on or about February 15, 1952, at the said White Center Athletic Club, Inc., located at 9616 17th Ave. S.W., the defendant Bert DePierris sold whiskey by the glass to Berch D. West.

7. That on or about May 6, 1952, at the said White Center Athletic Club, Inc., located at 9616 17th Ave. S.W., Seattle, Washington, the defendant Russell W. Felton sold whiskey by the glass to H. E. Daggett.

8. That on or about May 7, 1952, at the said White Center Athletic Club, Inc., located at 9616 17th Ave. S.W., the defendant Russell W. Felton sold whiskey by the glass to H. E. Daggett.

IV.

That in addition to the overt acts found by the Court in paragraph III of these Special Findings of Fact, the Court finds that the following additional overt acts were committed by the defendants Peter Desimone, John Stepich, Harold Hopkins, Russell W. Felton and Bert DePierris:

1. That during the period commencing June 30, 1951, and ending May 8, 1952, there was filed with the Wage and Excise Tax Division of the Federal Government at Tacoma, Washington, certain official forms by the said White Center Athletic Club, Inc., located at 9616 17th Ave. S.W., Seattle, Washington, listing the defendants Peter Desimone, John Stepich and Harold Hopkins as officers of said corporation.

2. That during the period commencing June 30, 1951, and ending May 8, 1952, there was filed with the Tax Commission of the state of Washington, at Olympia, Washington, certain official forms by the said White Center Athletic Club, Inc., located at 9616 17th Ave. S.W., Seattle, Washington, listing the defendants Peter Desimone, John Stepich and Harold Hopkins as officers of said corporation.

3. That on or about March 31, 1952, at Seattle, Washington, the defendant Harold Hopkins, subscribed and swore before a notary public of the State of Washington residing at Seattle, Washington, that he, the said Harold Hopkins, was the Secretary-Treasurer of the said White Center Athletic Club, Inc., a corporation.

4. That on or about October 20, 1951, at the said White Center Athletic Club, Inc., located at 9616 17th Ave. S.W., Seattle, Washington, the defendant Peter Desimone did interrogate and allow to enter onto the said premises Berch D. West, and the defendant Russell W. Felton, at approximately the same time and at the same place, sold whiskey by the glass to the said Berch D. West.

5. That on or about October 26, 1951, the said defendants Peter Desimone, John Stepich, Harold Hopkins and Russell W. Felton, using the name White Center Athletic Club, Inc., stored on the premises located at 9616 17th Ave. S.W., Seattle, Washington, approximately 420 bottles of liquor.

6. That on or about January 30, 1952, at the said White Center Athletic Club, Inc., located at 9616 17th Ave. S.W., Seattle, Washington, the defendant Bert DePierris sold whiskey by the glass to Berch D. West.

7. That on or about February 4, 1952, at the said White Center Athletic Club, Inc., located at 9616 17th Ave. S.W., Seattle, Washington, the defendants Peter Desimone and Bert DePierris sold whiskey by the glass, and at the same time and place the defendant Harold Hopkins was acting as doorman at said White Center Athletic Club, Inc.

8. That approximately three weeks prior to February 29, 1952, and within the period covered in this Indictment, the defendant Harold Hopkins ad-

vised Mrs. Frederick Schwier at the said White Center Athletic Club, Inc., located at 9616 17th Ave. S.W., Seattle, Washington, that the Doctor Edward Lincoln Smith Orthopedic Guild of which Mrs. Schwier was a member, that the said White Center Athletic Club, Inc., would serve liquor to her party and charge 50c a drink for bar liquor and 65c for cocktails.

9. That on or about February 29, 1952, at the said White Center Athletic Club, Inc., located at 9616 17th Ave. S.W., the defendants Russell W. Felton and Bert DePierris sold whiskey by the glass.

10. That on or about March 9, 1952, at the said White Center Athletic Club, Inc., located at 9616 17th Ave. S.W., Seattle, Washington, the defendant Bert DePierris sold whiskey by the glass to Berch D. West and Rodderick Whittall, and at the approximate same time and place the defendant Russell W. Felton ordered both Berch D. White and Rodderick Whittall to leave the said White Center Athletic Club, Inc., and the premises occupied thereby.

11. That on or about April 6, 1952, the said defendants Peter Desimone, John Stepich, Harold Hopkins, Russell W. Felton and Bert DePierris, using the name of White Center Athletic Club, Inc., stored liquor on the premises located at 9616 17th Ave. S.W., Seattle, Washington, approximately 22 bottles of liquor.

12. That on or about May 6, 1952, at the said White Center Athletic Club, Inc., located at 9616 17th Ave. S.W., Seattle, Washington, the defendant John Stepich did interrogate and allow to enter onto said premises H. E. Daggett.

13. That on or about May 7, 1952, at the said White Center Athletic Club, Inc., located at 9616 17th Ave., S.W., Seattle, Washington, the defendant John Stepich did act as a coin change cashier for the operation of slot machines located on said premises.

Done In Open Court this 17th day of May, 1954.

/s/ JOHN C. BOWEN,

United States District Judge.

Presented and Approved by:

/s/ RICHARD D. HARRIS,

Asst. United States Attorney.

Receipt of copy acknowledged.

[Endorsed]: Filed May 17, 1954.

United States District Court, Western District
of Washington, Northern Division

No. 48,570

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PETER DESIMONE,

Defendant.

JUDGMENT, SENTENCE AND
COMMITMENT

On this 17th day of May, 1954, the attorney for the Government, and the defendant, Peter Desimone, appearing in person and being represented by John Spiller and George J. Toulouse, Jr., his attorneys, the Court finds the following:

That prior to the entry of his plea, a copy of the Indictment was given the defendant and the defendant entered a plea of not guilty and a trial was held, resulting in a verdict of guilty as to Count I thereof, there being only one count in the Indictment herein; that the Probation Officer of this district has made a presentence investigation and report to the Court, now, therefore,

It Is Adjudged that the defendant, Peter Desimone, having waived a jury, has been tried and convicted by the Court and was found guilty of the offense of violation of Sec. 3253, Title 26, U.S.C., and Sec. 371, Title 18, U.S.C., as charged in Count I of the Indictment, and the Court having asked the defendant whether he has anything to say why

judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that as to Count I the defendant is guilty as charged in Count I of the Indictment and is convicted.

It Is Adjudged and Ordered that as to Count I the defendant be committed to the custody of the Attorney General of the United States for confinement in the United States Penitentiary at McNeil Island, Washington, or in such other like institution as the Attorney General of the United States or his authorized representative may by law designate, for the period of Eighteen (18) Months.

It Is Further Ordered that the Clerk of this court deliver a certified copy of this Judgment, Sentence and Commitment to the United States Marshal or other qualified officer, and that said copy serve as the commitment of the defendant.

Done in Open Court this 17th day of May, 1954.

/s/ JOHN C. BOWEN,

United States District Judge.

Presented and Approved by:

/s/ RICHARD D. HARRIS,

Asst. U. S. Attorney.

(Conspiracy to violate and violation of Sec. 3253, T. 26, U.S.C.—unlawfully carrying on business of retail liquor dealer.)

Entered in Criminal Docket May 18, 1954.

[Endorsed]: Filed May 17, 1954.

United States District Court, Western District
of Washington, Northern Division

No. 48,570

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN STEPICH,

Defendant.

JUDGMENT, SENTENCE AND
COMMITMENT

On this 17th day of May, 1954, the attorney for the Government, and the defendant, John Stepich, appearing in person and being represented by John Spiller and George J. Toulouse, Jr., his attorneys, the Court finds the following:

That prior to the entry of his plea, a copy of the Indictment was given the defendant and the defendant entered a plea of not guilty and a trial was held, resulting in a verdict of guilty as to Count I thereof, there being only one count in the Indictment herein; that the Probation Officer for this district has made a pre-sentence investigation and report to the Court, now, therefore,

It Is Adjudged that the defendant, John Stepich, having waived a jury, has been tried and convicted by the Court and was found guilty of the offense of violation of Sec. 3253, Title 26, U.S.C., and Sec. 371, Title 18, U.S.C., as charged in Count I of the Indictment, and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause

to the contrary being shown or appearing to the Court,

It Is Adjudged that as to Count I the defendant is guilty as charged in Count I of the Indictment and is convicted.

It Is Adjudged and Ordered that as to Count I the defendant be committed to the custody of the Attorney General of the United States for confinement in the King County Jail at Seattle, Washington, or in such other like institution as the Attorney General of the United States or his authorized representative may by law designate, for the period of Fifteen (15) Days, and further, that the defendant shall pay a fine to the United States of America in the sum of Fifteen Hundred (\$1,500.00) Dollars, and shall stand committed until paid.

It Is Further Ordered that the Clerk of this court deliver a certified copy of this Judgment, Sentence and Commitment to the United States Marshal or other qualified officer, and that said copy serve as the commitment of the defendant.

Done in Open Court this 17th day of May, 1954.

/s/ JOHN C. BOWEN,

United States District Judge.

Presented and Approved by:

/s/ RICHARD D. HARRIS,

Asst. United States Attorney.

(Conspiracy to violate and violation of Sec. 3253, T. 26, U.S.C.,—unlawfully carrying on business of retail liquor dealer.)

[Endorsed]: Filed May 17, 1954.

United States District Court, Western District
of Washington, Northern Division

No. 48,570

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HAROLD HOPKINS,

Defendant.

JUDGMENT, SENTENCE AND
COMMITMENT

On the 17th day of May, 1954, the attorney for the Government, and the defendant, Harold Hopkins, appearing in person and being represented by John Spiller and George J. Toulouse, Jr., his attorneys, the Court finds the following:

That prior to the entry of his plea, a copy of the Indictment was given the defendant and the defendant entered a plea of not guilty and a trial was held, resulting in a verdict of guilty as to Count I thereof, there being only one count in the Indictment herein; that the Probation Officer for this district has made a presentence investigation and report to the Court, now, therefore,

It Is Adjudged that the defendant, Harold Hopkins, having waived a jury, has been tried and convicted by the Court and was found guilty of the offense of violation of Sec. 3253, Title 26, U.S.C., and Sec. 371, Title 18, U.S.C., as charged in Count I of the Indictment, and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no suffi-

cient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that as to Count I the defendant is guilty as charged in Count I of the Indictment and is convicted.

It Is Adjudged and Ordered that as to Count I the defendant be committed to the custody of the Attorney General of the United States for confinement in the King County jail at Seattle, Washington, or in such other like institution as the Attorney General of the United States or his authorized representative may by law designate, for the period of Fifteen (15) Days, and further, that the defendant shall pay a fine to the United States of America in the sum of Twelve Hundred (\$1,200.00) Dollars, and shall stand committed until paid.

It Is Further Ordered that the Clerk of this Court deliver a certified copy of this Judgment, Sentence and Commitment to the United States Marshal or other qualified officer, and that said copy serve as the commitment of the defendant.

Done In Open Court this 17th day of May, 1954.

/s/ JOHN C. BOWEN,

United States District Judge.

Presented and Approved by:

/s/ RICHARD D. HARRIS,

Asst. United States Attorney.

(Conspiracy to violate and violation of Sec. 3253, T. 26, U.S.C.—unlawfully carrying on business of retail liquor dealer.)

[Endorsed]: Filed May 17, 1954.

United States District Court, Western District of
Washington, Northern Division

No. 48570

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RUSSELL W. FELTON,

Defendant.

JUDGMENT, SENTENCE AND ORDER
OF PROBATION

On this 17th day of May, 1954, the attorney for the Government, and the defendant, Russell W. Felton, appearing in person and being represented by John Spiller and George J. Toulouse, Jr., his attorneys, the Court finds the following:

That prior to the entry of his plea, a copy of the Indictment was given the defendant and the defendant entered a plea of not guilty and a trial was held, resulting in a verdict of guilty as to Count I thereof, there being only one count in the Indictment herein; that the Probation Officer for this district has made a presentence investigation and report to the Court, now, therefore,

It Is Adjudged that the defendant, Russell W. Felton, having waived a jury, has been tried and convicted by the Court and was found guilty of the offense of violation of Sec. 3253, Title 26, U.S.C., and Sec. 371, Title 18, U.S.C., as charged in Count I of the Indictment, and the Court having asked

the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that as to Count I the defendant is guilty as charged in Count I of the Indictment and is convicted.

It Is Adjudged and Ordered that as to Count I the defendant, Russell W. Felton, be committed to the custody of the Attorney General of the United States for confinement in the King County jail at Seattle, Washington, or in such other like institution as the Attorney General of the United States or his authorized representative may by law designate, for the period of Thirty (30) Days.

It Is Further Ordered and Adjudged that the execution of the sentence herein be and hereby is Suspended and the defendant is placed on probation for a period of One (1) Year, commencing this date, upon the following conditions:

1. The defendant shall not unlawfully possess, handle or dispose of intoxicating liquor in any form whatsoever.

2. The defendant shall be placed upon probation as provided by the statutes of the United States relative to probation during his good behavior and until further order of the Court and upon the express condition that said defendant does not during said probationary period violate any law of the United States or of any state or community where he may be, and shall report regularly to the

United States Probation Officer at the times and in the manner said Officer shall direct.

Done In Open Court this 17th day of May, 1954.

/s/ JOHN C. BOWEN,

United States District Judge.

Presented and Approved by:

/s/ RICHARD D. HARRIS,

Asst. United States Attorney.

[Endorsed]: Filed May 17, 1954.

United States District Court, Western District of
Washington, Northern Division

No. 48570

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BERT DePIERRIS,

Defendant.

JUDGMENT, SENTENCE AND ORDER
OF PROBATION

On this 17th day of May, 1954, the attorney for the Government, and the defendant, Bert DePierris, appearing in person and being represented by John Spiller and George J. Toulouse, Jr., his attorneys, the Court finds the following:

That prior to the entry of his plea, a copy of the

Indictment was given the defendant and the defendant entered a plea of not guilty and a trial was held, resulting in a verdict of guilty as to Count I thereof, there being only one count in the Indictment herein; that the Probation Officer for this district has made a presentence investigation and report to the Court; now, therefore,

It Is Adjudged that the defendant, Bert DePierris, having waived a jury, has been tried and convicted by the Court and was found guilty of the offense of violation of Sec. 3253, Title 26, U.S.C., and Sec. 371, Title 18, U.S.C., as charged in Count I of the Indictment, and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that as to Count I the defendant is guilty as charged in Count I of the Indictment and is convicted.

It Is Adjudged and Ordered that as to Count I the defendant, Bert DePierris, be committed to the custody of the Attorney General of the United States for confinement in the King County jail at Seattle, Washington, or in such other like institution as the Attorney General of the United States or his authorized representative may by law designate, for the period of Sixty (60) Days.

It Is Further Ordered and Adjudged that the execution of the sentence herein be and hereby is Suspended and the defendant is placed on proba-

tion for a period of Two (2) Years, commencing this date, upon the following conditions:

1. The defendant shall not unlawfully possess, handle or dispose of intoxicating liquor in any form whatsoever.

2. The defendant shall be placed upon probation as provided by the statutes of the United States relative to probation during his good behavior and until further order of the Court and upon the express condition that said defendant does not during said probationary period violate any law of the United States or of any state or community where he may be, and shall report regularly to the United States Probation Officer at the times and in the manner said Officer shall direct.

Done in Open Court this 17th day of May, 1954.

/s/ JOHN C. BOWEN,
United States District Judge.

Presented and Approved by:

/s/ RICHARD D. HARRIS,
Asst. United States Attorney.

[Endorsed]: Filed May 17, 1954.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Now come the defendants Peter Desimone, John Stepich, and Harold Hopkins above named, and each

of them, by and through their attorneys of record, George J. Toulouse, Jr., and John Spiller, and hereby give notice of appeal, and do appeal, from the conviction, judgment and sentence in the above-entitled cause made and entered this 17th day of May, 1954.

/s/ GEORGE J. TOULOUSE, JR.,

/s/ JOHN SPILLER,

Attorneys for Defendants.

Receipt of copy acknowledged.

[Endorsed]: Filed May 17, 1954.

[Title of District Court and Cause.]

BOND ON APPEAL—PETER DESIMONE

Know All Men by These Presents:

That we, Peter Desimone, as principal, and National Automobile & Casualty Insurance Co., a corporation organized and existing under and by virtue of the laws of the State of Washington, as Surety, are held and firmly bound unto the United States of America, in the sum of Two Thousand and no/100 (2000.00) to be paid to the said United States of America, certain attorney, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated the 17th day of

May, in the year of our Lord, One Thousand Nine Hundred and Fifty-four.

The Condition of the above recognizance is such, that, whereas, lately at a District Court of the United States for the Western District of Washington in a suit pending in said Court, between United States of America vs. Peter Desimone, No. 48570, a judgment was rendered against the said Peter Desimone and the said Peter Desimone having filed in the Clerk's Office of said Court Notice of Appeal in duplicate, from said judgment in the aforesaid suit, and said appeal is now regularly pending in the United States Court of Appeals in and for the Ninth Circuit Court, to be holden at the City of San Francisco in the State of California and Northern District of California,

Now Therefore, if the said Peter Desimone surrender himself in execution of the judgment, upon its being affirmed or modified, or upon the appeal being dismissed, or that in case of the judgment be reversed and the cause be remanded for a new trial he appear in the Court to which said cause may be remanded for a new trial and render himself amenable to any and all lawful orders and process in the premises, then this recognizance shall be void, otherwise to remain in full effect and virtue. This recognizance shall be deemed and construed to contain the "express agreement" for summary judgment, and execution thereon, mentioned in Rule 34 of the District Court. As a further condition the defendant is prohibited from leaving the jurisdic-

tion of this Court without authorization of the United States District Judge.

[Seal] /s/ PETER DESIMONE,
NATIONAL AUTOMOBILE & CASUALTY
INSURANCE CO.,

By /s/ CLARENCE DEMAN,
Attorney in Fact.

Approved:

/s/ JOHN C. BOWEN,
U. S. District Judge.

Acknowledged before me and approved the day and year first above written.

/s/ RICHARD D. HARRIS,
Asst. United States Attorney for the Western Dis-
trict of Washington.

[Endorsed]: Filed May 18, 1954.

[Title of District Court and Cause.]

BOND ON APPEAL—JOHN STEPICH

Know All Men By These Presents:

That we John Stepich, as principal, and National Automobile Casualty Insurance Co., a corporation organized and existing under and by virtue of the laws of the State of California, as Surety, are held and firmly bound unto the United States of America, in the sum of Five Hundred and no/100 (\$500.00) to be paid to the said United States of

America, certain attorney, executors, administrators or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated the 17th day of May, in the year of our Lord, One Thousand Nine Hundred and Fifty-four.

The Condition of the above recognizance is such that, whereas, lately at a District Court of the United States for the Western District of Washington in a suit pending in said Court, between the United States of America, vs. John Stepich, No. 48570, a judgment was rendered against the said John Stepich and the said John Stepich having filed in the Clerk's Office of said Court Notice of Appeal in duplicate, from said judgment in the aforesaid suit, and said appeal is now regularly pending in the United States Court of Appeals in and for the Ninth Circuit Court, to be holden at the City of San Francisco in the State of California and Northern District of California,

Now, Therefore, if the said John Stepich surrender himself in execution of the judgment, upon its being affirmed or modified, or upon the appeal being dismissed, or that in case of the judgment be reversed and the cause be remanded for a new trial he appear in the Court to which said cause may be remanded for a new trial and render himself amenable to any and all lawful orders and process in the premises, then this recognizance shall be void, otherwise to remain in full effect and virtue. This recognizance shall be deemed and con-

strued to contain the "express agreement" for summary judgment, and execution thereon, mentioned in Rule 34 of the District Court. As a further condition the defendant is prohibited from leaving the jurisdiction of this Court without authorization of the United States District Judge.

[Seal] /s/ JOHN STEPICH.

NATIONAL AUTOMOBILE & CASUALTY
INSURANCE CO.,

By /s/ CLARENCE DEMAN,
Attorney in Fact.

Approved:

/s/ JOHN C. BOWEN,
U. S. District Judge.

Acknowledged before me and approved the day
and year first above written.

/s/ RICHARD D. HARRIS,
Asst. United States Attorney for the Western Dis-
trict of Washington.

[Endorsed]: Filed May 18, 1954.

[Title of District Court and Cause.]

BOND ON APPEAL—HAROLD HOPKINS

Know All Men By These Presents:

That we, Harold Hopkins, as principal, and National Automobile Casualty Insurance Co., a corporation organized and existing under and by virtue

of the laws of the State of California, as Surety, are held and firmly bound unto the United States of America, in the sum of Five Hundred and no/100 (\$500.00) to be paid to the said United States of America, certain attorney, executors, administrators or assignes, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated the 17th day of May, in the year of our Lord, One Thousand Nine Hundred and Fifty-four.

The Condition of the above recognizance is such that, whereas, lately at a District Court of the United States for the Western District of Washington in a suit pending in said Court, between the United States of America, vs. Harold Hopkins No. 48570 a judgment was rendered against the said Harold Hopkins and the said Harold Hopkins having filed in the Clerk's Office of said Court Notice of Appeal in duplicate, from said judgment in the aforesaid suit, and said appeal is now regularly pending in the United States Court of Appeals in and for the Ninth Circuit Court, to be holden at the City of San Francisco in the State of California and Northern District of California,

Now, Therefore, if the said Harold Hopkins surrender himself in execution of the judgment, upon its being affirmed or modified, or upon the appeal being dismissed, or that in case of the judgment be reversed and the cause be remanded for a new trial he appear in the Court to which said cause may

be remanded for a new trial and render himself amenable to any and all lawful orders and process in the premises, then this recognizance shall be void, otherwise to remain in full effect and virtue, This recognizance shall be deemed and construed to contain the "express agreement" for summary judgment, and execution thereon, mentioned in Rule 34 of the District Court. As a further condition the defendant is prohibited from leaving the jurisdiction of this Court without authorization of the United States District Judge.

[Seal] /s/ HAROLD HOPKINS.

NATIONAL AUTOMOBILE & CASUALTY
INSURANCE CO.,

By /s/ CLARENCE DEMAN,
Attorney in Fact.

Approved:

/s/ JOHN C. BOWEN,
U. S. District Judge.

Acknowledged before me and approved the day
and year first above written.

/s/ RICHARD D. HARRIS,
Asst. United States Attorney for the Western Dis-
trict of Washington.

[Endorsed]: Filed May 18, 1954.

[Title of District Court and Cause.]

AMENDED NOTICE OF APPEAL

Now come the above-named defendants, Peter Desimone, John Stepich and Harold Hopkins, hereby giving notice of appeal in the above-entitled cause, and, in compliance with rule 37 of the Federal Rules of Criminal Procedure, set forth the following:

I.

That the title of the above-entitled cause is "United States of America, plaintiff, vs. Peter Desimone, John Stepich, Harold Hopkins, Russell W. Felton and Bert DePierris, defendants."

II.

That the names and addresses of the said defendants are: Peter Desimone, care of Frank Brewster, Longacres Race Track, Renton, Washington; John Stepich, 12229 4th Avenue, S.W., Seattle, Washington; and Harold Hopkins, 9810 42nd Avenue S.W., Seattle, Washington.

III.

That the names and office addresses of the attorneys for the said defendants are: George J. Toulouse, Jr., 805 Arctic Building, Seattle 4, Washington, and John Spiller, 406 Joseph Vance Building, Seattle 1, Washington.

IV.

That the offense charged against said defendants in the indictment in the above-entitled cause was

an unlawful conspiracy to carry on the business of a retail liquor dealer, violative of Title 18, USC, section 3253, and to fail to pay the tax required by Title 26, USC, section 3253.

V.

That by the oral and written judgment of the Honorable John C. Bowen, Judge of the above-entitled court, made and entered herein on May 17, 1954, the defendant, Peter Desimone, was convicted of the crime charged in said indictment and sentenced to serve eighteen months' incarceration at a place of confinement to be designated by the Attorney General of the United States; that by the oral and written judgment of the Honorable John C. Bowen, Judge of the above-entitled court, made and entered herein on May 17, 1954, the defendant, John Stepich, was convicted of the crime charged in said indictment and sentenced to incarceration in the County Jail at King County, Washington, for a period of fifteen days and to payment of a fine in the sum of \$1,500.00; and that by the oral and written judgment of the Honorable John C. Bowen, Judge of the above-entitled court, made and entered herein on May 17, 1954, the defendant Harold Hopkins, was convicted of the crime charged in said indictment and sentenced to incarceration in the County Jail at King County, Washington, for a period of fifteen days and to payment of a fine in the sum of \$1,200.00.

VI.

That the said Peter Desimone, John Stepich and Harold Hopkins, and each of them, hereby appeal the judgment and sentence aforesaid to the United States Circuit Court of Appeals for the Ninth Circuit.

VII.

And that the said appellants, Peter Desimone, John Stepich and Harold Hopkins, are not now confined, being at liberty under bond.

GEORGE J. TOULOUSE, JR.

and

JOHN SPILLER,

By /s/ JOHN SPILLER,

Attorneys for Appellants, Peter Desimone, John Stepich and Harold Hopkins.

Receipt of copy acknowledged.

[Endorsed]: Filed May 26, 1954

In the District Court of the United States for the
Western District of Washington, Northern
Division

No. 48570

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PETER DESIMONE, JOHN STEPICH,
HAROLD HOPKINS, RUSSELL W. FEL-
TON, and BERT DePIERRIS,

Defendants.

Before: The Honorable John C. Bowen,
District Judge.

TRANSCRIPT OF PROCEEDINGS AT TRIAL
April 21, 1954, 10:00 A.M.

Appearances:

RICHARD D. HARRIS, ESQ.,
Assistant United States Attorney,
Appeared for Plaintiff; and

GEORGE J. TOULOUSE, JR., ESQ.,
JOHN SPILLER, ESQ.,
Appeared for Defendants.

The Court: I would like to ask in Cause No. 48570 entitled United States of America, Plaintiff, vs. Peter Desimone, John Stepich, Harold Hopkins, Russell W. Felton, and Bert DePierris, Defendants,

are the parties and their counsel ready now to proceed with the trial of that case?

Mr. Spiller: We are, your Honor.

Mr. Harris: Yes, your Honor.

The Court: Are there any papers which counsel wish to file?

Mr. Spiller: I would like to be heard briefly upon a motion. [2*]

The Court: You may proceed.

Mr. Spiller: I would like to present to the Court and briefly be heard upon a motion for dismissal of the indictment.

The Court: You may proceed.

Mr. Spiller: I have just served upon counsel for the Government a copy of a motion that I am handing to the bailiff for transmission to the Court. Would the Court prefer to read it first?

The Court: Yes. May I?

(The Court reads document.)

The Court: I wish you would please make your remarks as brief as possible and sufficient, however, to protect your record and to advise the Court in the briefest way possible of the situation mentioned in your motion, Mr. Spiller. I do not wish to hear long argument. I cannot do that. As a matter of fact, these motions should have been made on motion calendar days so that the Court then might already, before this occasion, have disposed of them. Nevertheless, any invalidity of the indictment may be noted by either the litigants through their coun-

sel or the trial judge at any stage of the proceeding.

Try to be brief, Mr. Spiller.

Mr. Spiller: I will do that, if the Court [3] please.

At the outset then, may I say to the Court that the indictment itself, beginning on line 18 of page 1 thereof, says that these individual defendants:

“* * * did unlawfully conspire to and with one another, and with divers other persons to the Grand Jury unknown, to commit an offense against the United States, to wit, to willfully and unlawfully carry on the business of a retail liquor dealer, and in so doing to willfully fail to pay the tax required by law * * *.”

Now, the statute respecting the substantive crime of carrying on the business and failing to pay the tax provides—and I am going to be brief—I am going to elide the unnecessary language there:

“Any person who shall carry on the business of a* * * retail liquor dealer * * * and willfully fails to pay the special tax * * *”

shall be guilty.

Now, it is seriously urged upon the Court that the indictment is faulty in the manner in which it alleges the conspiracy to commit the substantive crime. Now, I am familiar with cases, if the Court please, that permit a certain latitude on the part of the [4] Government in charging crime. On the other hand, the law is settled that the charge itself in the indictment must with clarity and with cer-

tainty advise the defendants, the counsel and the Court of precisely what the charge here is. In this charge in the first place it is impossible to determine from it whether the charge is the conspiracy, the act of conspiracy——

The Court: Will you pause for just a moment?

May I advise counsel there will be another matter which necessarily will have to interrupt these proceedings at 4:00 o'clock this afternoon. You may now proceed with your remarks.

Mr. Spiller: The first real point, to come briefly to it, if the Court please, is that the words "in so doing" which precede the allegation of failing to pay the tax can be read in conjunction either with the act of conspiracy or in conjunction with the alleged act of carrying on the business, and it is respectfully submitted that it is impossible to determine from the face of this pleading precisely what the combination is with respect to which and upon which this one count of the indictment is based.

Now, a second point in that same connection, that read either way the charge of the count results in an absurdity. If the indictment is to be read as [5] charging a conspiracy to carry on the business and in so doing, that is to say in so conspiring, they fail to pay the tax, it is submitted to the Court that in the mere act of a conspiracy attended with nothing more, the failure to pay the tax does not allege and state a crime.

The second point in that connection, that assuming that you read it in connection with the words that they allegedly carried on the business, it

still results in an absurdity. You cannot carry on the business and in the mere act of carrying on the business fail to pay the tax. That requires an additional act of omission and one that is not charged.

The further and third point that the statutory requirement of an allegation as to the carrying on of the business and of a willful failure to pay the tax, those two in conjunction are not here pleaded in the language in which this indictment is framed, and we think that that is a serious bar towards the presentation of a defense in this case.

The Court: Did you wish to add any thoughts, Mr. Toulouse? The Court will hear you briefly, also, if you would like.

Mr. Toulouse: There is only one matter that I might refer to, your Honor. Carefully read, it is my [6] position that since the Government charged a conspiracy and then went on to say:

“* * * to wit, to willfully and unlawfully carry on the business of a retail liquor dealer, and in so doing to willfully fail to pay the tax required by law * * *”

that, in effect, the language that I just read fails to allege that the tax was not paid irrespective of the fact that the cases might hold that the burden is upon the defendants to show that the tax was paid. I still would contend that the indictment does not contend a conspiracy to commit an offense against the United States because it fails to allege that pursuant to the conspiracy that the tax was not paid.

The Court: Does your point involve this result: That you contend that the conspiracy allegation does not allege completion and success in obtaining the objectives of a conspiracy?

Mr. Toulouse: No, your Honor. My point is the conspiracy has to contain two agreements: One, to willfully carry on the business and, in the conjunctive, to willfully fail to pay the tax. That you do not have a conspiracy of that nature alleged. You do not have a conspiracy embracing an agreement to willfully carry on a business and to willfully fail to pay the tax. In [7] short, you could have a conspiracy to willfully carry upon this business, your Honor, and you would have no crime committed. It is only when you had an agreement, a further agreement, between the conspirators to fail to pay the tax, that you have a conspiracy to violate 3253. The language, in saying that the tax was not paid, does not allege an agreement or a conspiracy of the character that would violate 3253. You would have to allege both premises, I repeat, in the conjunctive, that the agreement did embrace both covenants as it were as between all of the conspirators to do two things, to carry on the business and to carry on that business and not pay the tax. They must have agreed to that, and this indictment does not allege that.

Mr. Harris: I wish to resist the motion, your Honor. I wish to state that the indictment in alleging the conspiracy is complete and in conformity with the statutes, and it sets forth the necessary allegations sufficient to constitute an alleged violation.

The Court: The Court does not agree at this stage with the objections to the sufficiency of the indictment which have been stated by counsel in support of the motion for dismissal of the indictment, and for that reason, among others, the motion in all its parts is denied. [8]

Are counsel and the parties now ready to proceed to trial?

Mr. Harris: Yes, your Honor.

Mr. Spiller: Yes, your Honor.

The Court: I wish to remind the defendants that it is necessary that each one of you be present during the trial at all times when the trial is proceeding. Do not leave the room for any purpose of your own. If you must leave the room by reason of illness or anything of that sort, if you will let your counsel speak of it, Court arrangements will be made for you to leave the room if that is necessary. It is possible with a number of persons interested in the same case that any one might unthinkingly leave the room, and if so, maybe the attorneys in the case might not notice or, or the trial judge might not notice it, but the law requires that the case not proceed in the absence of any defendant, and I ask the defendants to cooperate with the Court in seeing that no such thing happens that would violate the law.

At this time it is appropriate for the respective litigants to make an opening statement of what they think the proof in the case will be. We will first hear plaintiff's opening statement of what plaintiff thinks the proof will be in this case. [9]

(Mr. Harris opened the case to the Court on behalf of the plaintiff.)

(Mr. Toulouse reserved the defendants' opening statement.)

The Court: Call the plaintiff's first witness or otherwise proceed with the plaintiff's case in chief.

Mr. Harris: Yes, your Honor. This witness will be called somewhat out of order but he has requested permission to leave early, so I am doing that.

The Court: Is there any objection?

Mr. Toulouse: No.

For the purposes of the record, your Honor, I want to move at this time that as to the defendants Stepich and Hopkins in particular, and as to all of the defendants, that the indictment be dismissed, as to the defendants Stepich and Hopkins in particular, on the opening statement of counsel to the effect that the only thing alleged in the indictment or in counsel's opening statement is the bare fact that these two men held themselves out to be officers of a corporation which apparently is alleged in the indictment to have equipped and occupied some premises in a building at 9616 17th Avenue S.W. The mere fact that they may have agreed to do it does not in any way constitute a conspiracy or even evidence of a conspiracy to violate any law of [10] the United States.

I might say that if that were true, an agreement made in this court room to form a club to form a bar to sell whiskey in the Olympic Hotel would

ipso facto in the mere fact that you had made such an agreement constitute a crime without the further agreement or without some evidence that counsel has not mentioned, that they further intended to operate this club and not pay this \$37.50 occupation tax due the Government for the year in question.

For the reason just stated, I move that particularly as to those two defendants whom counsel's opening statement merely mentions as officers of a corporation, who equipped a place of business for the corporation apparently—he does not say that they did it for themselves—and held themselves out to be officers of this corporation and equipped this place of business—for a dismissal of the indictment as to those two defendants, and as to all of the defendants.

The Court: The motion is denied as to each and all of the defendants.

Proceed.

Mr. Harris: I will call Mr. Riddell. [11]

NORMAN R. RIDDELL

called as a witness by and on behalf of plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Harris:

Q. Would you state your name, please?

A. Norman R. Riddell.

Q. What is your occupation?

(Testimony of Norman R. Riddell.)

A. I am County Clerk of King County.

Q. And your address?

A. 901 County-City Building.

Q. Did you receive a subpoena duces tecum to appear and bring with you a certain file?

A. I did.

Q. Have you complied with that subpoena, sir?

A. I have.

Q. And what file do you have with you at the present time?

A. Our official Superior Court File No 441309, "State ex rel. Charles O. Carroll, Prosecuting Attorney of King County, Relator, vs. White Center Athletic Club, a corporation, and Brooks Realty Company, Inc., [12] a corporation, Defendants."

Mr. Harris: Now, may I confer with counsel?

The Court: You may.

(Mr. Harris confers with Mr. Toulouse and Mr. Spiller.)

The Court: Will counsel arrange to use only copies certified or not certified, according to their agreement, and do not ask to use the original records for keeping by this Court?

Mr. Harris: For the record then, your Honor, in the original file is the Answer in 441309, of which I have in my possession a certified copy, and I am submitting the certified copy to your Honor with the original, and that being the only——

The Court: Let the certified copy be marked as Plaintiff's Exhibit 1.

(Testimony of Norman R. Riddell.)

Mr. Harris: All right.

The Court: Let the certified copy, not the original file, be marked Plaintiff's Exhibit 1 for identification.

(Photostat "Answer" marked Plaintiff's Exhibit 1 for identification.) [13]

Q. (By Mr. Harris): Mr. Riddell, will you state, if you know, whether or not the file that you have in your possession, the original of it, is an official record of your office?

A. Yes. That is one of my deputies' signatures, and the photostatic copy is a certified picture of the original record.

Q. And that original record has been under your control and custody in your regular operation of your business, is that right?

A. Yes, sir.

Mr. Harris: At this time, your Honor, the Government will offer Plaintiff's Exhibit 1 but only as to page 2, commencing with the words "State of Washington County of King," which is found on the last part of the Plaintiff's Exhibit 1.

The Court: Plaintiff's Exhibit 1, as to the part specified in the offer of counsel for the plaintiff, is now offered in evidence?

Mr. Harris: Yes.

Mr. Toulouse: I object to the introduction of Plaintiff's Exhibit 1 on the grounds it is not relevant or material to any issue framed by the indictment, and it is not relevant as to any issue

(Testimony of Norman R. Riddell.)

outside of the issue probably framed in the entire file that Mr. Riddell has before him, and that if it be introduced [14] that the entire file covering the subject matter that it is relevant with respect to be introduced.

The Court: The objection is overruled. Plaintiff's Exhibit 1 is now admitted.

(Plaintiff's Exhibit 1 received in evidence.)

The Court: Any other questions of this witness?

Mr. Harris: No, your Honor.

Mr. Spiller: We have none.

Mr. Toulouse: No questions.

The Court: Is there any objection to Mr. Riddell taking with him the original files and records in his office as Clerk of the County of King in Cause No. 441309?

Mr. Spiller: No objection.

Mr. Toulouse: None.

Mr. Harris: No, your Honor.

The Court: You may take the original file back with you and thank you for your trouble, Mr. Riddell.

(Witness excused.)

The Court: You may call the next witness.

Mr. Harris: Mr. Montante. [15]

CHARLES P. MONTANTE

called as a witness by and on behalf of plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Harris:

Q. Would you state your full name and spell it, please?

A. Charles P. Montante, M-o-n-t-a-n-t-e.

Q. What is your address?

A. 2312 State Street, Olympia, Washington.

The Court: How long have you lived there, Mr. Montante?

The Witness: Nine years, sir.

The Court: Before that, where was your home?

The Witness: New York City, sir.

The Court: You may inquire.

Q. (By Mr. Harris): Mr. Montante, what is your occupation?

A. I am a field agent for the Washington State Tax Commission.

Q. And, briefly, what do your duties consist of?

A. My duties consist of issuing tags for all mechanical devices throughout the State and also checking [16] to see that these devices are properly registered with the State.

Q. Now, did you receive a subpoena to appear in this case and a subpoena duces tecum to bring with you certain records? A. Yes, sir.

Q. And have you complied with that subpoena and do you have those records with you?

(Testimony of Charles P. Montante.)

A. Yes, sir.

Q. What are those records?

A. The records are the excise tax return reports which the White Center Athletic Club, Inc., files every two months.

Q. And what period of time in particular do those cover relevant to this case between July, 1951, and May, 1952?

A. Well, they started business 7-1-51, and they discontinued business some time in August of '52.

The Court: And those records are whose records?

The Witness: The returns that are received by the State of Washington Tax Commission.

Q. (By Mr. Harris): And are they part of the official records of the State? [17] A. Yes.

Q. And kept in the regular course of business there? A. Yes, sir.

Q. And you have brought them here from Olympia, have you? A. Yes, sir.

Mr. Harris: Now, may those be marked, your Honor? I don't want to mark them all.

The Court: Will the witness step down and in the presence of counsel on both sides identify silently to them what it is counsel wishes to have identified.

(Witness conferred with counsel on both sides.)

The Court: The witness may resume the witness stand.

(Witness returns to stand.)

(Testimony of Charles P. Montante.)

Q. (By Mr. Harris): Mr. Montante, you have no objection, do you, to removing certain papers that have been filed as the original file in this case, is that correct? A. That is correct.

Q. Are you able to pull out those papers now?

A. Yes, sir.

Mr. Harris: I think if we take out each page then, you Honor, and mark it it will probably be of [18] a little more assistance to both sides.

The Court: Is that the way it is preferred by both sides?

Mr. Toulouse: Yes.

The Court: What is it you wish him to withdraw first?

Q. (By Mr. Harris): Mr. Montante, will you please remove then the first one that you have there and hand it to the bailiff, please?

(Removes document and hands it to the bailiff.)

The Witness: Are these supposed to stay here in the Court?

The Court: The answer is yes.

Mr. Harris: The ones that you have removed unless counsel desire the others, yes.

Now, may those be marked, your Honor?

The Court: It will be marked Plaintiff's Exhibit 2 for identification.

(Tax Commission records marked Plaintiff's Exhibit 2 for identification.)

(Testimony of Charles P. Montante.)

The Court: Show Plaintiff's Exhibit 2 for [19] identification to counsel on both sides.

(Plaintiff's Exhibit 2 for identification handed to counsel.)

The Court: I am not sure that we can take time to read every line and study it carefully. I wish counsel at the place where you are would call attention to the pertinent part that you intend to deal with and let opposing counsel see that so as to accommodate opposing counsel.

Mr. Harris: Yes, your Honor. It is the intention of the Government only to offer the reference on each of the papers that constitute Plaintiff's Exhibit 2 to the White Center Athletic Club, Inc., the address where the operation is, the date, the signature of the officer and his position. The other details the Government is not offering.

The Court: Any objection?

Mr. Toulouse: Your Honor, I would like to ask the witness a few questions on voir dire before I make an objection.

The Court: I think if counsel do not stipulate at the beginning that these are State records, official State records, that you ought to on behalf of the plaintiff establish admissibility.

Mr. Harris: Yes, your Honor. [20]

Q. (By Mr. Harris): Mr. Montante, are these records kept by your department? A. Yes.

Q. Are they the official records of your department? A. Yes, sir.

Q. Kept in the ordinary course of business?

(Testimony of Charles P. Montante.)

A. Yes, sir.

Q. And have been in the custody and control of your department ever since? A. Yes, sir.

Q. And you brought them here to court without any other markings having been put on them, is that right? A. That is right.

Q. And they are the official records of the State of Washington? A. That is correct.

The Court: Does that meet—

Mr. Toulouse: No. That still didn't meet my objection, your Honor.

The Court: Well, if it is strictly on voir dire, not by way of general cross-examination, you may inquire only as to the admissibility of these documents.

Mr. Toulouse: Mr. Montante, looking at [21] Plaintiff's Exhibit 2, have you been the custodian of each one of those papers going to make up Plaintiff's Exhibit 2 since on or about the date that they bear as to their receipt? Have you been the custodian of those records yourself?

The Witness: Just part of these records.

Mr. Toulouse: In other words, as far as Plaintiff's Exhibit 2 is concerned, you don't know whether or not those are the records of the department?

The Witness: Well, the excise tax return forms are kept in a separate file, and the slot machine returns are kept in my office. In other words, I have nothing to do with the excise tax return forms.

Mr. Toulouse: In other words, you had nothing to do with those returns right there as far as

(Testimony of Charles P. Montante.)

physical custody of those papers is concerned? You haven't had any custody from the time they were received?

The Witness: That is right.

Mr. Toulouse: And you don't know whether or not those papers referred to are the official papers of the White Center Athletic Club, do you?

The Witness: These are the official papers of the White Center Athletic Club.

Mr. Toulouse: Were those papers signed in front of you by any member of the corporation? [22]

The Witness: No, sir.

Mr. Toulouse: You don't know whose signature is on there, do you?

The Witness: No.

Mr. Toulouse: And you don't know whether or when those papers were received by the State of Washington or by whom they were received, do you?

The Witness: That is correct.

Mr. Toulouse: I object to the introduction on the ground that there is no foundation to show that these are the records of the State of Washington or that this man has had custody of these records since the period of time involved, that is since some time in 1951 and some time in 1952 or that they are in fact the reports of the White Center Athletic Club, or for that matter, that they are relevant or material to any issue framed by this indictment.

The Court: You may inquire or otherwise proceed.

Q. (By Mr. Harris): Are these the official rec-

(Testimony of Charles P. Montante.)

ords of the Tax Commission of the State of Washington located at Olympia, Washington?

A. Yes, sir.

Q. And you know that of your own knowledge, do you? [23]

A. Yes, sir.

Q. And you were authorized to bring them here and did bring them here?

A. That is correct.

Mr. Harris: I will renew my offer.

The Court: It is necessary that somebody validate them as pertaining to something or somebody.

Q. (By Mr. Harris): And to whom do they pertain?

A. They pertain to the White Center Athletic Club, Incorporated.

Q. Located where?

A. At 9616 17th S.W., Seattle, Washington.

Q. And signed by whom?

A. Signed by John F. Stepich, President.

Q. President of what?

A. Of the White Center Athletic Club, Incorporated.

Q. All right. Refer to the second page then. To what does that apply?

A. The second page is the excise tax return for the period of July and August, 1951, on which they reported their income on the retailing service and other activities, and is signed by Peter Desimone, manager.

Q. And when you say "they," you are referring to what establishment, if any? [24]

A. White Center Athletic Club, Inc.

(Testimony of Charles P. Montante.)

Q. Located at the same address you previously stated? A. That is right.

Q. Now, would you look at each instrument that appears after the second page and see if your answers would be in any variance from the ones you have already given?

The Court: I want him to name the name of the parties. He has mentioned two parties and that bears on the question of materiality or relevancy, and I wish you to adduce the same information from each part of it.

Mr. Harris: All right.

Q. (By Mr. Harris): Now, on the third page, to what establishment, if any, does that apply?

A. To the White Center Athletic Club, Incorporated, and that is the excise tax return for the period of September and October, 1951.

Q. Signed by whom?

A. Signed by Harold Hopkins, Secretary of the White Center Athletic Club, Inc.

Q. And the fourth page?

A. It is the November—December excise tax return, [25] White Center Athletic Club, Incorporated, 9616 - 17th S.W., Seattle, Washington, and this return is also signed by Harold Y. Hopkins, Secretary.

Q. All right. The fifth page.

A. This excise tax return is for January and February, 1952. It is for the White Center Athletic Club, Inc., at 9616 17th S.W., Seattle, Washington, and it is also signed by Harold Hopkins.

(Testimony of Charles P. Montante.)

Q. The sixth page, if there is one.

A. That is all.

The Court: Miss Reporter, could you handily turn to the statement of counsel whereby he limited the offer as to materiality?

Mr. Harris: Well, to save time, the Government offers only as to Plaintiff's Exhibit 2 the title of the form, the White Center Athletic Club, or the establishment that filed it, its address, the date, and the signature of the purported officer and his position.

The Court: The objections are overruled. Plaintiff's Exhibit 2 is now admitted for the limited purpose stated by counsel.

(Plaintiff's Exhibit 2 received in evidence.)

Mr. Harris: Your witness.

Cross-Examination

By Mr. Toulouse:

Q. Mr. Montante, Plaintiff's Exhibit 2 is the retail sales tax return of the State of Washington, is that right?

A. That is right, sir.

Q. Now, examining that exhibit, is there anything in that exhibit that indicates that the White Center Athletic Club in any way paid a retail sales tax upon the sale of liquor or whiskey?

A. No, sir.

Q. You don't know whether or not that is the signature of John Stepich on that application, do you?

A. That is correct.

(Testimony of Charles P. Montante.)

Q. You do not know whether it is his signature?

A. I do not.

Q. And you don't know whether that is the return of the White Center Athletic Club, Inc., that is in this case, do you? As far as you know, it could be some other corporation?

A. I don't know——

Mr. Harris: Just a moment. May the witness have [27] an opportunity to explain his answer?

The Court: Pause after each question to give the witness a chance to answer.

A. Each account has a separate file number on which they report, and the file number given to the White Center Athletic Club is on its excise tax return, which is credited to his account in the amount of money that he pays to the State.

Q. (By Mr. Toulouse): In other words, what you are saying is that the State gives each account a number, and any papers that are mailed into the State go in that number? A. Yes, sir.

Q. And you just assume that those papers are mailed in by the persons authorized to have that number, is that correct? A. That is right.

Q. So my statement is still correct, that you don't know whether or not that is Mr. Stepich's signature or whether or not that is Mr. Hopkins' signature, is that correct? A. That is correct.

Q. You don't know whether or not that is a genuine report, do you? You merely know that it purports to be?

A. Will you repeat that again, sir? [28]

(Testimony of Charles P. Montante.)

Q. You don't know whether or not that is a genuine report of an officer of the White Center Athletic Club, do you? A. No. I do not know.

The Court: Any other questions?

Mr. Harris: No, your Honor.

The Court: The Court will be at recess for about ten minutes.

Mr. Toulouse: I have one more question of this witness.

The Court: You may ask that now, and the statement of the Court will be stricken.

Q. (By Mr. Toulouse): Page one of Plaintiff's Exhibit 2, what is that?

A. That is an application for a certificate of registration.

Mr. Toulouse: That is all.

Redirect Examination

By Mr. Harris:

Q. There was one issued? Was that certificate issued?

A. Yes, sir. The certificate was issued [29] sometime in November of '51.

Mr. Harris: Thank you. That is all.

The Court: Did that, as a part of the record in connection with such issuance, play any part?

The Witness: No, sir.

The Court: What was it there for? What did you accumulate it for if it played no part?

The Witness: I was talking about the certificate that was issued, is that correct, sir?

(Testimony of Charles P. Montante.)

The Court: No. I want to know whether or not the State of Washington made, or is supposed to have ever made, any use of those exhibits or parts of those exhibits which are now in evidence for limited purposes as Plaintiff's Exhibit 2. What use did the State make of those records, if you know?

The Witness: Well, this is the account's records, sir, as to when he starts business and as to the——

The Court: It had nothing to do with the thing about which Mr. Harris just now asked you, is that right or wrong? Read Mr. Harris' question. Never mind. We shall take a ten-minute recess.

(Recess.)

The Court: May the record show that all parties on trial with their counsel are present?

Mr. Harris: Yes, your Honor. [30]

Mr. Toulouse: Yes, your Honor.

Mr. Spiller: Yes, your Honor.

The Court: You may proceed with the interrogation of this witness.

Recross-Examination

By Mr. Toulouse:

Q. Mr. Montante, Plaintiff's Exhibit 2 is a sales tax return, is a series of sales tax returns, is that correct? A. That is right.

Q. And the only use that the State of Washington makes of those sales tax returns is to see whether or not the sales tax due the State of Washington is paid, is that correct?

(Testimony of Charles P. Montante.)

A. That is correct.

Q. And the returns in no way specify what merchandise was or was not sold. They merely specify the amount of merchandise sold and the tax paid thereon?

A. That is correct.

Q. And the State of Washington has never made any use of those returns since they were made and since they were paid?

A. That is correct. [31]

Mr. Toulouse: That is all.

Mr. Harris: No other questions.

The Court: You may step down.

(Witness excused.)

The Court: Call the next witness.

Mr. Harris: May this witness be excused?

The Court: Any objection?

Mr. Toulouse: No objection.

The Court: This witness is excused and may now retire from further attendance at this trial.

Call the next witness or otherwise proceed.

Mr. Harris: I would like to call Mrs. Johnsen a little out of order because of her health.

GERALDINE JOHNSEN

called as a witness by and on behalf of plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Harris:

Q. Would you state your name, please?

A. Geraldine Johnsen. [32]

(Testimony of Geraldine Johnsen.)

Q. How do you spell "Johnsen"?

A. J-o-h-n-s-e-n.

Q. And what is your address, Mrs. Johnsen?

A. 10644 Marine View Drive.

Q. And generally what part of the city is that located in? A. West Seattle.

Q. Do you know where the White Center Athletic Club is? A. Yes.

Q. How far is that from there?

A. Oh, approximately a mile.

Q. Have you ever been to the White Center Athletic Club? A. Yes.

Q. And do you know the address there?

A. No, I don't.

Q. Do you know the proximate location, though, in White Center? A. Yes.

Q. Where is it?

A. Well, it is a block off the main road in White Center and just off Roxbury.

Q. And just generally what type of a building structure is it, if you know? [33]

A. It seems to me it is on the order of a quonset hut.

Q. All right. Now, have you ever been there?

A. Yes.

Q. And have you seen any of the defendants there at any time? A. No.

Q. Do you recall the occasion that you were there? A. Yes.

Q. And what day was that, if you know?

(Testimony of Geraldine Johnsen.)

A. It was the 29th of February I believe, a Friday or a Saturday night, I am not sure.

Q. Of 1952? A. Yes.

Q. And what, if anything, was taking place there at that time?

A. Well, our Orthopedic Guild was giving a dinner party.

Q. And what was the name of your Orthopedic Guild?

A. The Dr. Edward Lincoln Smith Guild.

Q. And were the members of your Guild there at that time? A. Yes.

Q. How many, do you know?

A. I have forgotten. [34]

Q. Well, approximately?

A. How many members? Just the members or members with their parties?

Q. No. How many were there as the Guild or as guests of the Guild, altogether?

A. Well, let's see. I really can't remember.

Q. Were there ten or more?

A. Oh, no. It was 90 or more, I would say.

Q. And what did you do there that evening, if anything?

A. We had dinner and we danced and we had drinks.

Q. Now, what kind of drinks did you have?

A. Regular drinks with liquor, hard alcohol.

Q. And how would you obtain those drinks?

A. We just ordered them either at the bar or at the tables where we were sitting.

(Testimony of Geraldine Johnsen.)

Q. And the alcohol that was used, did you bring your alcohol? A. No.

Q. Did any members of your Guild that you know of bring any liquor with them? A. No.

Q. And what, if anything, did you pay for the liquor?

A. Well, we paid just per drink. I believe [35] it was around sixty cents a drink. I didn't pay for them. I don't know.

Q. Who paid for you? A. My husband.

Q. Was there anything that occurred that evening relative to some question concerning the liquor?

A. The only thing I know of is that Mrs. Noble was given a list and she gave it to my husband who, in turn, gave it to me, a list of liquor, and I just kept it. I didn't know what it was for or what I was to do with it.

Q. What was on that list?

A. Well, it had a list of different kinds of liquor, how many bottles.

Q. Have you any idea of how many bottles of liquor or of the type of liquor that was on the list?

A. I really didn't pay too awfully much attention because I didn't know what it was for.

Q. Did you read the list, however?

A. Yes. I glanced at it.

Q. And you have no independent recollection now? A. No.

Q. If you were able to see that list or a copy of that list, would that assist you in any way?

(Testimony of Geraldine Johnsen.)

A. Well, I would recognize the list because [36]
I initiated it.

Mr. Harris: May this be marked?

The Court: It may be marked.

(Photostat marked Plaintiff's Exhibit 3 for
identification.)

Q. (By Mr. Harris): Mrs. Johnsen, you are
being handed Plaintiff's Exhibit 3 for identification.
Does that assist you in any way in refreshing your
recollection of that list?

A. Yes, this is the list.

Q. How are you able to identify it?

A. Mainly by my initials on it.

Q. Do they appear there? A. Yes.

Q. What are your initials? A. GMJ.

Q. Now, I will ask you, after having refreshed
your recollection from the list, what were the
amounts and what was the type of liquor that was
on that list?

The Court: May I ask you first to note that you
are leaving the witness with the statement that this
is it. Now, you wish——

Mr. Harris: Excuse me, your Honor. [37]

Q. (By Mr. Harris): Mrs. Johnsen, is that the
exact statement or a photostatic copy of the state-
ment? A. This is a photostatic copy.

Q. Does that assist you in refreshing your recol-
lection? A. Yes.

Q. Can you state now what the types of liquor
and the amounts were that were on that list?

(Testimony of Geraldine Johnsen.)

A. By reading it off the list, yes.

Q. And other than that, though, you are not able to refresh your recollection?

A. No, I am not.

Mr. Harris: That is all.

Mr. Toulouse: No questions.

Mr. Spiller: No questions.

The Court: You may step down.

Mr. Harris: I have one more question.

The Court: You may be seated again.

Q. (By Mr. Harris): You received that list as I understood you, or the original of that list, from Mrs. Noble, am I correct?

A. Mrs. Noble gave it to my husband, who in turn gave it to me.

Mr. Harris: All right. May Mrs. Johnsen be excused, your Honor? [38]

The Court: Is there any objection?

Mr. Toulouse: No objection.

Mr. Spiller: No objection.

The Court: She may now be excused and may retire when she wishes to.

(Witness excused.)

Mr. Harris: I would like to call Mr. Burdick.

DONALD R. BURDICK

called as a witness by and on behalf of plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Harris:

Q. Would you state your name, please?

A. Donald R. Burdick.

Q. How do you spell your last name?

A. B-u-r-d-i-c-k.

Q. And what is your address, Mr. Burdick?

A. 501 Washington Building, Tacoma.

Q. And your occupation?

A. I am chief of the Returns Processing Branch for the Internal Revenue Service. [39]

Q. Connected with what official Government agency, if any?

A. The Treasury Department.

Q. Of the Federal or the State Government?

A. United States Government.

Q. And how long have you been in that position?

A. Been there about a year and a half, sir.

Q. Do you have custody of the records of the Internal Revenue Department?

A. Of the returns, yes, sir.

Q. And you brought them with you today, have you?

A. I have brought certain records, yes, sir.

Q. And to whom do those records apply?

A. To the White Center Athletic Club, Incorporated.

(Testimony of Donald R. Burdick.)

Q. Would you mind handing those to the bailiff so they may be brought down here and counsel can see them?

(Witness' records are handed to Mr. Harris.)

Mr. Harris: I ask that this be marked separately by itself.

The Court: It may be marked.

(Quarterly Tax Returns marked Plaintiff's Exhibit 4 for identification.)

Mr. Spiller: May I ask of the Court for [40] our purposes that that exhibit be shown to one of the defendants here?

The Court: Is there any objection?

Mr. Harris: No, your Honor.

The Court: The bailiff may let counsel see Plaintiff's Exhibit 4 for identification for the purpose mentioned by counsel a moment ago.

(Plaintiff's Exhibit 4 for identification handed to Mr. Spiller.)

Mr. Harris: Then the other instruments all together may be marked as Plaintiff's Exhibit 5, or may they be?

The Court: They may be.

(Federal Tax Records marked Plaintiff's Exhibit 5 for identification.)

Mr. Harris: Now, may Plaintiff's Exhibit 4 be shown to the witness?

The Court: It will now be done.

(Testimony of Donald R. Burdick.)

Q. (By Mr. Harris): Mr. Burdick, will you state, please, what Plaintiff's Exhibit 4 is, if you know?

A. The top document is a reconciliation statement form W-3 for the year 1951. The second page is Form 941, [41] the employer's quarterly tax return for the quarter ended September 30, 1951. The next document is an explanation of delinquency.

Q. And the next?

A. The last document is the employer's quarterly tax return for the quarter ended December 31, 1951.

Q. And what establishment, if any, does it refer to?

A. The White Center Athletic Club, Inc.

Q. Located where?

A. 9616 - 17th S.W., Seattle.

Q. And would you now go through the documents again that compose Plaintiff's Exhibit 4 and state if any contain the signatures of any of the defendants on trial here?

A. The employer's quarterly tax return for the quarter ended September 30, 1951, is signed by——

The Court: Just a moment. It is not in evidence yet. He should answer yes or no to your question.

Q. (By Mr. Harris): Is it signed by any of the defendants on trial here?

Mr. Spiller: May I interrupt, if the Court please, on that? I object to the question or at least unless he knows of his own knowledge that the individual defendant signed that. [42]

The Court: The objection is overruled. If he knows, is in the question, as I understand it.

(Testimony of Donald R. Burdick.)

The Witness: Will you repeat the question?

Q. (By Mr. Harris): Do any of the component parts of Plaintiff's Exhibit 4 bear the signature of any of the defendants who are on trial here?

The Court: If you know.

A. Yes, sir.

Q. And are these the official records of your bureau? A. They are, sir.

Q. And they have been brought here to Court by you? A. That is right.

Q. And are they kept in the ordinary course of business by the Internal Revenue Bureau?

A. Yes, sir.

Q. And they constitute part of the official records? A. That is right.

Q. Which, if any, of the defendants' names appear on any of the component parts of Plaintiff's Exhibit 4?

The Court: Do you have any objection?

Mr. Spiller: No objection to the name appearing.

The Court: Very well. You may answer. [43]

A. On the quarterly tax return for the quarter ended September 30, 1951, it is signed by John F. Stepich. The explanation of delinquency is also signed by John F. Stepich. The employer's quarterly tax return for the quarter ended December 31, 1951, is signed by Harold Hopkins.

Mr. Harris: I will offer Plaintiff's Exhibit 4.

The Court: It is admitted.

(Plaintiff's Exhibit 4 received in evidence.)

(Testimony of Donald R. Burdick.)

Mr. Harris: May the witness be shown Plaintiff's Exhibit 5?

The Court: It will now be done.

(Plaintiff's Exhibit 5 for identification handed to the witness.)

Q. (By Mr. Harris): Mr. Burdick, you are being handed Plaintiff's Exhibit 5 for identification; will you state, if you know, how many component parts constitute that exhibit?

A. There are three parts, sir.

Q. And are they kept in the official course of your business? A. They are, sir.

Q. And they are part of the official records [44] of the Internal Revenue Department?

A. They are, sir.

Q. And you brought them here to Court from those records? A. I have, sir.

Q. Taking the first component part, are you able to state to what does it apply?

A. The first page is a Form 11-B special tax return for the White Center Athletic Club, Inc., for a coin-operated gaming device stamp for the period July 1, 1951, to June 30, 1952.

Q. The second component part?

A. The second part is a transcript of the account on one of our Internal Revenue forms.

The third document is a Form 11-B special tax return for the White Center Athletic Club, Incorporated, for a stamp for a coin-operated amusement device for the period July 1, 1951, to June 30, 1952.

(Testimony of Donald R. Burdick.)

Q. And do you know if the signature of any one of the defendants appears thereon?

A. It does, sir.

Q. On which component part, if any?

A. On the first and the third pages, sir.

Q. And whom, if you know?

A. Peter Desimone. [45]

Mr. Harris: I will offer Plaintiff's Exhibit 5, your Honor.

Mr. Toulouse: No objection.

Mr. Spiller: No objection.

The Court: Plaintiff's Exhibit 5 is now admitted.

(Plaintiff's Exhibit 5 received in evidence.)

Q. (By Mr. Harris): Mr. Burdick, have you made a check of the official records to determine whether or not the White Center Athletic Club, Inc., had a Federal retail liquor stamp during the period July 1, 1951, to May 8, 1952?

A. We have, sir.

Q. And have you discovered any?

A. We have found none, sir.

Q. Any wholesale liquor dealer's stamp?

A. No, sir.

Q. Have you made a search of the records to determine whether or not any one of the defendants, which includes Peter Desimone, John Stepich, Harold Hopkins, Russell W. Felton and Bert De Pierris, have held such a stamp?

A. We have made a search and could find none, sir. [46]

(Testimony of Donald R. Burdick.)

Q. During that period?

A. During that period.

Q. Mr. Burdick, has the institution, the White Center Athletic Club, Incorporated, or any of the defendants, persons that I named, paid any of the special tax required by law to operate as a retail liquor dealer for that period of time?

A. As far as I know, they have not, sir.

Q. And you have searched the records, have you?

A. We have.

Q. And have found none?

A. We have found none.

Q. They have made no application or paid any tax or have any stamps at all?

A. According to our records, there is no record of it.

Mr. Harris: Your witness.

Cross-Examination

By Mr. Spiller:

Q. Mr. Burdick, will you turn to Plaintiff's Exhibit 4, please? The first component part of Exhibit 4 bears a signature which you have testified to, and whose signature does that purport to be? [47]

A. Not the first component part.

Q. The second one?

A. The second one does, sir.

Q. That bears a signature? A. It does.

Q. And whose is it? A. John F. Stepich.

Q. Were you present when that was signed?

A. I was not.

(Testimony of Donald R. Burdick.)

Q. You have testified on direct that you know that to be Mr. Stepich's signature?

A. I did not testify to that, sir.

Mr. Spiller: I don't want to be argumentative about this, if the Court please, but I do want to be certain for the record that Mr. Burdick's testimony is correctly in the record.

Q. (By Mr. Spiller): I understood you to be asked whether you knew whose signatures were on those component parts of Exhibit 4, and your answer was that you did. Now, do you know that to be John Stepich's signature? A. I do not, sir.

Q. You do not?

A. I do not know that to be his actual signature.

Q. And as to the other signatures on the [48] several remaining component parts of Plaintiff's Exhibit 4, do you know those to be the signatures of the parties whose names are there written?

A. I do not, sir.

Q. And is the same thing true with respect to the purported signatures of persons appearing in Plaintiff's Exhibit 5? A. I do not, sir.

Q. What? A. I do not, sir.

Mr. Spiller: I think that is all.

Mr. Harris: That is all, your Honor.

The Court: You may step down.

(Witness excused.)

The Court: Call the next witness.

Mr. Harris: I will call Mr. West.

BERCH D. WEST

called as a witness by and on behalf of plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Harris: [49]

Q. Will you state your name, please?

A. Berch D. West.

Q. And your address, Mr. West?

A. Yakima, Washington.

Q. Do you have an address over there?

A. 808 N. 24th Avenue.

Q. And your occupation?

A. Investigator for the Washington State Liquor Control Board.

Q. How long have you been so employed?

A. About five years.

Q. And were you employed then during the period July 1, 1951, through May 8, 1952?

A. Yes.

Q. In that same capacity? A. Yes.

Q. Where were you stationed during that period of time or a portion of that time?

A. Well, I work, of course, all over the State, but I did a lot around Seattle around about that time.

Q. Have you ever been to the White Center Athletic Club? A. Yes, I have.

Q. And where is that located?

A. That is located at 9616-17th Avenue [50] S.W., Seattle.

(Testimony of Berch D. West.)

Q. When were you out there, if you were, during that period of time?

A. Well, the first time I was there was October 20, 1951.

Q. And what time of the day was it that you went there?

A. It was real early in the morning of the 20th. It was around 12:15, about that time, that I went there. It was shortly after midnight.

Q. When you arrived there, what, if anything, occurred?

A. Well, of course, when I arrived there, there was a doorman there, and being required, I suppose, to have a membership, I was questioned considerable in regard to whether I was a member or not, of which I wasn't. After some conversation there, he wanted to know how I knew about the place.

Mr. Toulouse: Now, I object.

Mr. Harris: I will try to straighten that out.

Q. (By Mr. Harris): That conversation that you had there, was that with any of the defendants at that time? A. No. It wasn't.

Q. Did you have a conversation with any of the [51] defendants immediately after that?

A. Yes, I did.

Q. Which defendant was that?

A. Mr. Desimone.

Q. And what were the circumstances leading up to the conversation with him?

A. Well, he entered the place, the office where the doorman was. This doorman was just about to

(Testimony of Berch D. West.)

refuse me service, and Mr. Desimone came in there and the doorman told him, Mr. Desimone, that I had been there before, which I had told the man, with some friends or something on that order, and I wanted to come in, so Mr. Desimone questioned me about the same line as to where and when and how I got in.

Q. What did he say?

A. Well, he asked me about the same things that the doorman did as to who I came with, and I told him some people that I don't recall, who I told him, now. So after the conversation, he told me to go on in.

Q. And he admitted you, did he, at that time?

A. Yes, he did.

Q. And how long did this conversation take place before he admitted you?

A. Oh, it didn't last too long; probably a minute or so. It pretty well covered what the doorman [52] said, what he asked me.

Q. All right. What did you do, if anything, after you entered the premises, or just how did you gain entrance? Let us go through that first.

A. You mean from the starting in the front before I entered the place?

Q. Yes.

A. Well, there is a canopy over there. It is a quonset-type building, quite large. I would say probably it is maybe 50-foot wide, and probably around—at least 100 foot, I would say, long. Well, after you open the first door and then contact the

(Testimony of Berch D. West.)

doorman, and after I was admitted, told to go in, there is a check room right on your left out there where the doorman is, and where you check your coat. It would be on your left as you enter. Then I understand there is another room or something back there, but I wouldn't know about that. I was just told that. On the right as you enter here, there is—I don't know what you call it—kind of another little room off on your right there.

Well, after I was admitted, they pushed on this button here, and it is electrically operated and the door was opened and I went straight—it is over to your right and straight ahead to the bar, and sat down.

Q. What kind of a bar? [53]

A. Well, a square more or less, a square bar. In the center it has a pyramid of glasses and bottles of different types and things that come up in a pyramid in the center of the bar.

Q. Was there anything else in that room?

A. Yes. It it a very nice room as far as——

The Court: If you can, just answer the question.

Q. Describe what the inside of the room looked like. What were the other objects in the room?

A. Well, of course. I observed slot machines, one-armed bandits, plus a lot of liquor bottles setting there. Some had numbers on them; some did not have numbers on them. Shot glasses and glasses of different types, built up to a pyramid, and on top, as I recall, had two lights, kind of a soft, glowing, colored lights on the bottles.

(Testimony of Berch D. West.)

Q. Were there any tables in there?

A. Yes.

Q. How many tables approximately?

A. Well, I couldn't say right offhand. It looked like they were quite long from where I was sitting. There might have been fifteen, might have been twenty. I wouldn't know.

Q. Was there any dance floor area?

A. Yes, there was. [54]

Q. Now, what did you do after you got inside, if anything?

A. Well, I went directly to the bar and ordered drinks—of whisky.

Q. And who was at the bar, if any one?

A. Russell Felton at that particular time.

Q. And were there any other persons in the establishment?

A. Oh, yes. I don't recall just how many at that particular time. It probably built up into more later.

Q. Well, how many persons were in there, would you estimate?

A. Oh, maybe 35 or 50. I am just guessing at it.

Q. When you contacted Mr. Felton, where was he?

A. He was the bartender.

Q. Where was he located?

A. Just inside the bar.

Q. What, if anything, did you say to him at that time?

A. I didn't say anything in particular to him, just ordered drinks.

(Testimony of Berch D. West.)

Q. Did you order a drink from him?

A. Yes, I did.

Q. What did you say?

A. After being admitted, there was no question of asking him. [55]

Q. What did you say?

A. I just said: "I want a straight whisky with water."

Q. You said that to Mr. Felton? A. Yes.

Q. And what did he do?

A. He served it to me; poured it, straight whisky with water.

Q. Where did he get the whisky?

A. That whisky was poured out of a bottle back of the bar.

Q. Did you bring in any whisky there with you?

A. No, sir.

Q. Did you have any whisky in there that belonged to you? A. No, sir.

Q. And how do you know that it was whisky that he served you?

A. It looked like whisky, smelled like whisky, and tasted like whisky.

Q. What did you do after he served you that glass of whisky, if anything?

A. I paid him fifty cents for it.

Q. And did you order whisky from him again that evening? [56] A. Yes, I did.

Q. And was the same procedure followed?

A. The same procedure, yes, sir.

Q. And you paid for it? A. I paid for it.

(Testimony of Berch D. West.)

Q. Then did you leave?

A. After I had been there approximately around an hour or a little longer, I left.

Q. Did you go back there on another occasion?

A. Yes, I did.

Q. When was that, if you know?

A. That was about January 16th.

Q. And what, if anything, occurred there relative to your entrance at that time?

A. After I had been there the first time, there was nothing happened at the door. I wasn't questioned at all. I merely walked in with my companion.

The Court: Will you let the witness, by a proper question, give us information as to what year the January 16th date was?

The Witness: January 16, 1952.

Q. (By Mr. Harris): 1952, is that your testimony?

A. Yes, sir.

Q. And what occurred after you got in this time, if [57] anything?

A. I ordered drinks of whisky.

Q. From whom?

A. Another bartender by the name of Bert.

Q. Did you know his last name at that time?

A. No, sir, I did not.

Q. Do you know his last name now?

A. Yes, I do.

Q. What is his last name? A. DePierris.

Q. And is he here in the courtroom?

A. Yes, he is.

(Testimony of Berch D. West.)

Q. Do you see him? A. Yes, I do.

Q. You have mentioned three defendants, Felton, Desimone and DePierris. Do you see them all here in the courtroom? A. Yes, I do.

Q. And can you point them out? A. Yes.

Q. Would you do so?

A. Yes. Do you want me to point them out from here?

Mr. Harris: Can it be stipulated that he knows them? [58]

Mr. Toulouse: Point them out.

Mr. Harris: May he leave the stand and point out the three defendants?

The Court: He may do that.

(Witness leaves stand and points out Mr. Felton, Mr. Desimone and Mr. DePierris. Witness then returns to the stand.)

Q. (By Mr. Harris): And on January 16, 1952, how were you able to determine it was liquor that was served to you at that time?

A. Looked like whisky, smelled like whisky and tasted like whisky.

Q. Did you go back on another occasion?

A. Yes, I did.

Q. When was that?

A. I was there on January 30, 1952.

Q. How did you gain admittance at that time?

A. I had been there before and there was no questions asked. I just walked in.

Q. What did you do after you got inside?

(Testimony of Berch D. West.)

A. I sat at the bar, about the same location, and ordered drinks.

Q. And the same procedure followed?

A. Yes. [59]

Q. Did you have a conversation with Mr. De-Pierris? A. Oh, no particular conversation.

Mr. Spiller: I will object to that, if the Court please.

The Court: The objection is sustained. He didn't say anything, as far as I know, about whom he dealt with on that occasion.

Mr. Harris: I beg your pardon. I think that is correct.

Q. (By Mr. Harris): Did you see any of the defendants there at that time? A. Yes.

Q. Who? A. Mr. DePierris.

The Court: We will now take the noon recess in this case until two o'clock this afternoon. The Court is now at recess.

(At 12:00 o'clock p.m., Wednesday, April 21, 1954, proceedings recessed until 2:00 p.m., Wednesday, April 21, 1954.) [60]

April 21, 1954—2:00 P.M.

The Court: May the record show that all of the defendants on trial are present with their counsel and plaintiff's counsel is also present?

Mr. Harris: Yes, your Honor.

Mr. Toulouse: Yes, your Honor.

Mr. Spiller: Yes, your Honor.

(Testimony of Berch D. West.)

The Court: You may resume the interrogation of this witness now on the stand.

Q. (By Mr. Harris): Mr. West, I was asking you concerning January 30, 1952, prior to the noon recess. You stated you had seen Bert DePierris there on that evening. I ask you now what, if any, conversation did you have with him at that time?

A. On January 30th, there was no particular conversation that I recall.

The Court: That is sufficient. Ask him another question.

Q. Did you ask him what was his capacity, what was he doing there?

The Court: Answer yes or no. [61]

A. Yes.

Q. What was he doing there, if you know?

A. Bar tending, tending bar.

Q. Did you ask him for a drink on that night?

A. Yes.

Q. What were the words you used, if you recall?

A. I asked him for a drink of whisky straight with water.

Q. What did he do in response to that, if anything?

A. He got me a whisky straight with water.

Q. What did you do?

A. I proceeded to consume it.

Mr. Toulouse: Now, I object to counsel leading this witness. I have no objection——

Mr. Harris: I didn't——

Mr. Toulouse: Well, you have been.

(Testimony of Berch D. West.)

The Court: He hasn't led him yet.

Mr. Toulouse: I am cautioning him right now.

Q. (By Mr. Harris): What did you do, if anything, as far as he was concerned?

A. After the drink was served to me, I paid him for it.

Q. And how much did you pay him?

A. Fifty cents. [62]

The Court: And what person was that to whom you now refer?

The Witness: Bert DePierris.

Q. (By Mr. Harris): Did you bring any liquor with you on that evening? A. No, sir.

Q. Had you left any liquor there previously?

A. No, sir.

Q. And how were you able to determine that this was liquor on this occasion?

A. By the looks, the taste, and the smell.

Q. Did you go back to the White Center Athletic Club on another occasion after January 30, 1952?

A. Yes, I did.

Q. Did you go there on February 15, 1952?

Mr. Spiller: Object to that as a leading question.

The Court: Sustained.

Q. (By Mr. Harris): When was the next time you went back there? A. February 15, 1952.

Q. What time?

A. Shortly around midnight, shortly after.

Q. And how did you gain entrance on this occasion? [63]

(Testimony of Berch D. West.)

A. Just going in and they recognized me from previous visits.

Mr. Spiller: Object to that as not responsive to the question.

The Court: Read the question and the answer.

(Last question and answer read by reporter.)

The Court: The objection is overruled.

Q. (By Mr. Harris): Did you see any one of the defendants there on that evening?

A. Yes.

Q. Whom? A. Bert DePierris.

Q. And what was he doing on this particular evening, if anything?

A. He was tending bar.

Q. Did you have a conversation with him on that evening?

A. Yes, I did; just a small one.

Q. What was that conversation?

A. Just ordered a drink, whisky straight with water.

Q. And what did he do in response to your order?

A. He served me whisky straight with water.

Q. And what did you do, if anything, after receiving it? [64]

A. Paid him fifty cents a drink.

Q. How could you tell it was liquor?

A. Looked and tasted and smelled like whisky.

Q. Did you go back on another occasion after that? A. Yes, I did.

(Testimony of Berch D. West.)

Q. And when was the next time that you went back? A. I went back on March 9, 1952.

Q. Approximately what time, if you recall?

A. Midnight, shortly after.

Q. And how did you gain entrance on that occasion?

A. The same as before. I went to the door with a companion.

Q. The same way as the last time there?

A. Yes.

Q. And who, if any, of the defendants did you see there at that time?

A. Well, I seen Bert DePierris tending bar.

Q. Any one else?

A. Not right at that particular minute; just a few minutes later I did.

Q. Who did you see then?

A. Russell Felton.

Q. What, if anything, occurred when you first went in and saw DePierris. Did you have a conversation with him then? [65]

A. Well, just ordered a whisky straight with water.

Q. And what did he do in response to that?

A. Started to serve it to me.

Q. What happened then?

A. Mr. Felton came from somewhere and told him, hollered to him, and told him not to serve me any more drinks, that he thought I was a State man, and he did ask me to leave.

Q. Who asked you to leave?

(Testimony of Berch D. West.)

A. Mr. Felton.

Q. And was this conversation in the presence of Mr. DePierris?

A. That part, at that time it was.

Q. And what did you do then?

A. I told him okay; I would leave; but I asked to stop and get my coat on my way out.

Q. Did any one go with you to the door?

A. Mr. Felton, yes.

Q. And did you leave then? A. Yes, I did.

Q. Who went with you on that occasion, if you recall?

A. Another investigator, Roddy Whittall.

Mr. Harris: You may inquire. [66]

Mr. Spiller: No questions.

The Court: You may step down.

Mr. Toulouse: Just a minute. I have one question.

Cross-Examination

By Mr. Toulouse:

Q. Did this Rodney Twill accompany you on all these occasions? That is, January 16, January 30, February 15, and March 9?

A. Mr. Quill? No, sir.

Q. Is that the man you say accompanied you?

A. No, sir.

Mr. Harris: How do you spell it?

The Witness: I am not sure of that. W-h-i-t-a-l or double l, I wouldn't know.

Q. (By Mr. Toulouse): Is he still around?

(Testimony of Berch D. West.)

A. I don't know.

Mr. Harris: I might advise counsel he is under subpoena.

Mr. Toulouse: Is he in this courtroom now?

Mr. Harris: Mr. Whittall?

(No answer.) [67]

Q. (By Mr. Toulouse): What day of the week was January 16th?

A. Offhand, I wouldn't remember.

Q. 1952? A. I wouldn't remember.

Q. What day of the week was January 30, 1952?

A. I don't recall.

Q. How do you know that you were there on January 16, 1952?

A. Well, in the first place I was sent there by my office, Washington State Liquor Control Board, to make an investigation.

Q. How do you personally know that you were there on that particular occasion at that time? Do you have some memorandum in your pocket?

A. No, sir. Well, I went over and read the file at the liquor office.

Q. In other words, you have no independent recollection of having been there on January 16, 1952?

A. Other than just going over my files, that is right.

Q. Well, you either have an independent recollection or you don't have. Do you have an independent recollection of being there, independent of

(Testimony of Berch D. West.)

the file? A. Well, yes. [68]

Q. You have an independent recollection of being there? A. Yes, I have a recollection.

Q. What day of the week was January 30, 1952?

A. I don't recall whether it was Sunday or any other day of the week. I don't recall that.

Q. What day of the week was February 15, 1952? A. I don't recall.

Q. What day of the week was March 9, 1952?

A. I don't recall.

Q. Were you reimbursed by the State of Washington for the money that you purportedly spent at the White Center Athletic Club?

A. Yes. A certain amount of money is appropriated for that purpose and they reimbursed me later, the Liquor Board.

Q. Did you put in a voucher for the drink you purportedly bought on January 16, 1952?

A. Yes, I did.

Q. Were you reimbursed for that?

A. Yes.

Q. How many drinks were you reimbursed for?

A. For the 16th?

Q. Yes.

A. I believe I had purchased about eight [69] drinks altogether.

Q. That evening you purchased eight drinks?

A. Altogether, yes.

Q. And on January 30, 1952, how many drinks did you purchase?

(Testimony of Berch D. West.)

A. I don't recall. It could have been four to eight drinks. I just don't recall right offhand.

Q. One ounce glasses of whisky?

A. Presume so. I wouldn't know.

Q. On February 15, 1952, how much whisky did you purchase?

A. I think I purchased eight drinks.

Q. On March 9, 1952, how many drinks did you purchase? A. I didn't purchase any.

Q. On March 9th? A. No, sir.

Q. Where are these vouchers that you submitted to the State of Washington to be reimbursed?

A. I wouldn't know except they are probably in the possession of the Washington State Liquor Control Board.

Q. To whom in the Washington State Liquor Control Board do you give these vouchers?

A. To my superior.

Q. Who is he? [70]

A. At the present time, Mr. Seth Taylor, but he was not with the Board at that particular time.

Q. Well, who in the Washington State Liquor Control Board would have the vouchers that I have just referred to?

A. I wouldn't know, sir.

Q. Now, you say this looked like whisky. How does whisky look?

A. Well, just what we call bar whisky, it has a brown color, something like, similar, you might say, looked like coffee probably, not quite as dark, amber color. There are variations of color.

(Testimony of Berch D. West.)

Q. What brand did you purchase on January 15, 1952?

A. I couldn't tell you the exact brand.

Q. On January 30, 1952?

A. No, sir, I couldn't tell you.

Q. What brand of whisky did you purchase?

A. I couldn't tell.

Q. Was it a malt liquor?

A. I wouldn't know.

Q. On January 16, January 30, February 15, March 9, 1952, can you state whether or not any one of the drinks that you purchased was or was not a malt liquor?

A. I cannot.

Q. You say it tasted like whisky. How does [71] whisky taste?

A. Well, alcohol contents in it.

Mr. Spiller: I can't hear him, if the Court please.

The Witness: Alcohol contents.

The Court: Speak up.

Q. (By Mr. Toulouse): How does alcohol content taste?

A. Well, I really don't know how to explain it. I am not that familiar with whisky.

Q. After you had those eight drinks, did it feel like whisky?

A. I didn't drink eight drinks. I purchased eight drinks.

Q. What did you do with the drinks?

A. Oh, people along the bar, I bought them drinks.

Q. You bought people along the bar a drink?

(Testimony of Berch D. West.)

A. Yes.

Q. Well, if you didn't drink the whisky, how would you know that it looked like whisky and tasted like whisky? A. I drank some of it.

Q. You drank some of it?

A. I didn't drink eight drinks.

Q. You purchased that for other people at the bar? [72] A. Yes.

Mr. Toulouse: That is all.

Redirect Examination

By Mr. Harris:

Q. Mr. West, counsel asked you concerning the bottle that was used. Did you see this bartender on these occasions pour other drinks?

A. Yes, I did.

Q. What bottle did he use then?

A. There were many bottles, as I recall, a lot of Seagram bottles, a lot of bottles that had numbers on them; some of them didn't have any—I mean had great big numbers, another sticker put around with the numbers on it. Others didn't have numbers or names. There was some poured out of Seagram's bottle marked with Seagram labels. Some was otherwise.

Q. The drinks that he poured for you, were they all out of the same bottle?

A. I don't know. Some of them were, and probably the next time I went it was out of some other bottle.

(Testimony of Berch D. West.)

Mr. Toulouse: I ask that that be stricken. He said he didn't know.

The Court: That is stricken. The Court [73] will disregard it.

Mr. Harris: That is all.

The Court: You may step down.

(Witness excused.)

The Court: Call the next witness.

Mr. Harris: Mr. Nicolai.

MAX R. NICOLAI

called as a witness by and on behalf of plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Harris:

Q. State and spell your name, please.

A. Max R. Nicolai—N-i-c-o-l-a-i.

Q. What is your address, Mr. Nicolai?

A. 2327 Harvard North.

Q. And your occupation?

A. I am an attorney at law.

Q. Do you know Harold Hopkins?

A. I have met Harold Hopkins.

Q. Do you see him here in the courtroom?

A. I am not sure. [74]

Mr. Harris: May Plaintiff's Exhibit 1 be shown to the witness?

(Plaintiff's Exhibit 1 handed to the witness.)

(Testimony of Max R. Nicolai.)

Q. (By Mr. Harris): Mr. Nicolai, you are being handed now Plaintiff's Exhibit 1. Would you refer to it, please, and state whether or not you have ever seen it before—or the original of it?

The Witness: May I take a minute to read this, your Honor?

The Court: Yes. You may do that.

(Witness examines Plaintiff's Exhibit 1.)

A. Yes, I have seen the original of this exhibit.

Q. Does your name appear thereon?

A. In two places on page two.

Q. And is that your signature?

A. That is a photostatic copy of my signature.

Q. And do you appear on there both in the capacity of attorney and as notary public, is that correct?

A. That is correct.

Q. And whose signature did you notarize?

A. The signature of Harold Y. Hopkins.

Q. And on what day did you notarize that signature?

A. According to the document, on the 29th day of March, 1952. [75]

Q. And did Harold Hopkins appear before you and sign that in your presence?

A. I don't have any independent recollection of it, but I assume he did.

Q. And you say you don't see the individual in this courtroom then who signed that in your presence?

A. I have a very poor memory as to persons

(Testimony of Max R. Nicolai.)

unless it be somebody I am extremely well acquainted with. I am not sure.

Q. Were you representing the White Center Athletic Club at this time? A. Certainly.

Q. And one of the officers came in and retained you, did he?

A. No. I don't think any of the officers of the club retained me. I think Mr. Desimone retained me.

Q. Did you ever talk to any of the officers of the club? A. Yes.

Q. What officers did you talk to?

A. I am sure I talked to Mr. Hopkins, and I don't remember who the other officers are.

Q. From whom did you receive the information that appears in the verification just above the Hopkins' signature there? [76]

A. Well, I don't recall. I could have received it either from the corporation papers or from Mr. Hopkins himself.

Q. And you have no independent recollection of that? A. I do not.

Q. Did you swear Mr. Hopkins at the time that he signed that?

A. I have no independent recollection of that, but that is my practice.

Q. And you had no particular purpose for not following that practice on this occasion, did you?

A. I did not.

Q. And for all intents and purposes you did follow that practice? A. Yes, sir.

Q. And to your knowledge Mr. Hopkins did not

(Testimony of Max R. Nicolai.)

pear before you and signed that, is that correct?

A. Yes, sir.

Q. And you don't recognize him here today?

A. Well, I am not sure. I would say it is the man sitting in the front row, the one in the middle, but I am not absolutely positive.

Mr. Harris: Your witness.

Mr. Spiller: No questions if the Court [77] please.

The Court: You may step down.

(Witness excused.)

Mr. Harris: May Mr. Nicolai be excused?

The Court: Any objection?

Mr. Spiller: No objection.

The Court: He may be excused and may go on about his business if that is his wish.

Mr. Harris: I would like to call Mr. Whittall if he is present yet.

(No answer.)

The Court: There is no response.

Mr. Harris: I will call Mrs. Schwier.

DIXIE SCHWIER

called as a witness by and on behalf of plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Harris:

Q. Would you state your name, please?

A. Dixie Schwier—S-c-h-w-i-e-r.

(Testimony of Dixie Schwier.)

Q. And what is your address, Mrs. Schwier?

A. 4502 West Concord, Seattle. [78]

Q. And generally in what section of the city is that?

A. In West Seattle.

Q. Are you familiar with the White Center Athletic Club?

A. Yes.

Q. And where it is located?

A. Yes.

Q. Have you ever been there?

A. Yes.

Q. And do you know Mrs. Johnsen who testified here earlier this morning?

A. Yes, I do.

Q. Do you belong to any organization similar to the one that she belongs to?

A. It is the same Orthopedic Guild, the Dr. Edward Lincoln Smith Guild.

Q. Now, have you ever been to the White Center Athletic Club?

A. Yes, I have.

Q. Have you ever been there and contacted any of the defendants who are on trial here today?

A. Yes.

Q. Whom did you contact?

A. A Mr. Hopkins. [79]

Q. And do you know when that was?

A. I know approximately.

Q. And when was it?

A. In January of 1952.

Q. And where was it?

A. At the White Center Athletic Club.

Q. And do you know about what time it was?

A. Only that it was in the evening after dinner, but not late.

(Testimony of Dixie Schwier.)

Q. And who was with you, if any one, at that time? A. My husband.

Q. And where was it if any conversation took place with Mr. Hopkins?

A. In the vestibule of the club.

Q. And what did you say to him, if anything?

A. We were making arrangements for a dinner dance that our Guild wanted to have, and as ways and means chairman I wanted to make the final arrangements about the dinner, the cost of the dinner, and the arrangements for serving drinks.

Q. And what, if anything, did he say to you in response to that?

A. That the club would furnish dinner at fifty cents a plate, I believe, that we could charge whatever we wanted to, the proceeds to go to the Orthopedic Hospital, [80] that our members and our guests could buy drinks at the club, regular drinks at fifty cents and fancier drinks at, I believe, sixty cents or sixty-five cents perhaps.

Q. And how long did this conversation take place?

A. Oh, I should say not over ten or fifteen minutes.

Q. Were those arrangements offered by Mr. Hopkins accepted by you? A. Yes.

Q. And were arrangements made then to have this dinner dance? A. Yes.

Q. And when was the dinner dance to be held?

A. February 29th.

Q. Of what year? A. 1952.

(Testimony of Dixie Schwier.)

Q. And did you hold such a dance on that day?

A. Yes, we did.

Q. Did you attend it? A. Yes, I did.

Q. What time of the evening did you first arrive there on February 29, 1952?

A. I should say around seven o'clock. We had arranged to have several guests and we wanted to be there to meet them because we had a large table.

Q. And that was in the evening, wasn't it? [81]

A. Yes.

The Court: What date in February, did you say?

The Witness: February 29th. I remember it because it was Leap Year Day, 1952.

The Court: You may inquire.

Q. (By Mr. Harris): And after you arrived there, what, if anything, did you do?

A. We had cocktails before dinner. We had planned to have dinner served at 8:00 or 8:30 or thereabouts.

Q. And how did you go about getting those cocktails?

A. The same as in any club. We ordered from the waitress or from the bartender. Some of the men ordered from the bartender because the group was getting quite large, and the waitresses were pretty busy.

Q. What type of cocktails did you order?

A. Well, just regular highballs mostly, I believe.

Q. What did they contain?

A. Whisky and water or Scotch and soda or similar.

(Testimony of Dixie Schwier.)

Q. And what, if anything, did you pay for those drinks? A. Fifty cents.

Q. And do you know what liquor was used to fix those cocktails?

A. I haven't any idea. It wasn't our [82] concern.

Q. Did you bring any liquor with you?

A. No. We didn't.

Q. Did your husband? A. No.

Q. Did any members of your party or your guests? A. No.

Q. Did any member of the Guild, as far as you know, bring any liquor with them? A. No.

Q. Did other members of the Guild buy liquor in the same manner you did? A. Yes.

Mr. Spiller: Object to that, if the Court please. It is not the best evidence of that.

The Court: That objection is overruled.

Mr. Toulouse: I object to the form of the question, your Honor.

The Court: The objection is overruled. Proceed.

Mr. Harris: Your witness.

Cross-Examination

By Mr. Toulouse:

Q. Will you now look at Plaintiff's Exhibit 3 which is before you? Do you recall having seen [83] the original of that list?

A. Just a glance, I believe. It wasn't given to me, but Mrs. Johnsen, to whom it was given. I do

(Testimony of Dixie Schwier.)

recall her saying: "I wonder what I am supposed to do with this," and I didn't know either.

Q. You do recall seeing it?

A. Yes; just briefly.

Mr. Toulouse: That is all.

Mr. Harris: May Mrs. Schwier be excused, your Honor?

The Court: Mrs. Schwier is excused from the stand.

(Witness excused.)

Mr. Harris: May she be excused from further attendance?

The Court: Any objection?

Mr. Toulouse: No objection.

The Court: You are excused and may go on about your business if that should be your wish.

Mr. Harris: Mrs. Noble.

LIDA ANDRA NOBLE

called as a witness by and on behalf of plaintiff, having been first duly sworn, was examined and testified as [84] follows:

Direct Examination

By Mr. Harris:

Q. Would you state your name, please, and spell it?

A. Lida Andra Noble—L-i-d-a Andra A-n-d-r-a Noble N-o-b-l-e.

Q. Mrs. Noble, where do you reside?

A. West Seattle, 10615 Marine View Drive.

(Testimony of Lida Andra Noble.)

Q. And are you acquainted with Mrs. Schwier and Mrs. Johnsen?

A. Yes. They belong to the same Orthopedic Guild which I do, Dr. Edward Lincoln Smith Guild.

Q. And did you belong to that Guild on February 29, 1952? A. Yes.

Q. Did you attend a dinner dance given by that Guild on that date? A. Yes.

Q. Where was that?

A. At the White Center Athletic Club.

Q. And that evening—do you recall Mrs. Johnsen and Mrs. Schwier being present on that evening?

A. Oh, yes.

Q. What time did you arrive there on that evening? [85]

A. Well, I think it was around 7:30. I came early to help Mrs. Johnsen take the money at the door and the tickets.

Q. And you did that, did you?

A. Yes, I did.

Q. During the course of the evening, did you partake of any of the refreshments out there?

A. Yes, I did.

Q. What, in particular?

A. You mean the food or the liquor?

Q. Well, both. Did you do both?

A. Yes. I had dinner there. I don't remember what it was. They had turkey and fish, I think, for dinner, your choice.

Q. Did you have any drinks?

A. I had two daiquiris before dinner.

The Court: Two what?

(Testimony of Lida Andra Noble.)

The Witness: Two daiquiris.

The Court: Spell it.

The Witness: I don't know how to spell it.

The Court: What are they?

The Witness: It is a rum mixed drink.

Q. (By Mr. Harris): And what procedure did you follow in ordering that drink or those [86] drinks?

A. Well, the waitress came around to our table and asked what we wanted, and I told my husband what I wanted, and he told the waitress and he put the money on the table, and she picked it up.

Q. Did it contain alcohol as far as you know?

A. Well, as far as I know, I would certainly judge it did.

Q. And how many drinks did you say you had there? A. I had two.

Q. Two of the same kind? A. Yes.

Q. During the course of the evening, did you receive anything from any of the employees or members out there?

A. Yes, I did. I received a list of liquors from Charlotte Fulford. I later found out her name was. She was a young girl. She came to me as I sat at the door, as I was taking the money and the tickets, and she came over and handed me a list of liquors and said: "This is a list of the liquors that we have for your Orthopedic Guild. They are behind the bar with your name on them, and if we have any trouble with the State Liquor Board about——." Well, now, I can't remember the exact words, but the idea was

(Testimony of Lida Andra Noble.)

that if they had any trouble, anybody came in to inquire about a liquor license—— [87]

Mr. Toulouse: Now, I ask that that all go out.

The Court: You will either have to state what she said or the substance and effect of her words.

A. Well, the substance was that we were to claim the bottles behind the bar, the list of bottles that she had listed on the paper as ours, and say that we had brought them.

The Court: Under what circumstances did she say you would do that, if she made any such statement?

The Witness: If they had trouble about a liquor license.

Mr. Toulouse: I still move it be stricken, because it is still hearsay as to any of these defendants. There is no connection between the alleged person who spoke to this woman outside of the presence of these defendants.

The Court: Subject to further proof to connect this person up with the establishment, the objection is overruled. You may renew the objection if it is not properly done.

Q. (By Mr. Harris): As far as you know, who was Charlotte Fulford?

A. She was the person to whom I paid the money for our dinners.

The Court: Where? At what place? [88]

The Witness: At the White Center Athletic Club.

The Court: On what date?

(Testimony of Lida Andra Noble.)

The Witness: February 29, 1952.

The Court: You may inquire.

Q. (By Mr. Harris): Do you recall what the list was that she gave to you on that evening?

Mr. Toulouse: I object to that on the grounds that the list is the best evidence.

The Court: The objection is overruled. Answer yes or no.

The Witness: Would you repeat the question?

The Court: Read it.

(Last question read by the reporter.)

A. Do you mean could I tell you exactly what was on the list?

Q. To the best of your recollection, yes.

A. I couldn't. I'm sorry. It was just a list of various different kinds. There was Seagram's on it and Old Crow. I glanced at it as I was busy taking money and taking tickets, and I didn't read it, memorize it.

Q. What is your best recollection as to the information contained on the list?

Mr. Toulouse: The witness has answered that question—that she just glanced at it and has no [89] recollection.

The Court: The objection is overruled. I do not believe that she has answered the question directly.

Mr. Harris: May Plaintiff's Exhibit 3—

The Court: Do you withdraw that last question stated by you?

Mr. Harris: No. I think she answered it.

(Testimony of Lida Andra Noble.)

The Court: She may have made an answer before you asked the question, but I do not think she has answered the question. She may have made a statement as to something that was not before her.

Mr. Harris: May the question be read to her?

The Court: Yes.

(The last question was read by the reporter as follows: "What is your best recollection as to the information contained on the list?")

A. My best recollection is that it was a list of liquors.

Q. Did it designate the number of bottles, do you know?

Mr. Toulouse: I object to that.

The Court: The objection is overruled.

A. I don't remember.

Q. If you were able to see the list or a copy [90] of the list, would that assist you in any way?

A. Yes, it would.

Mr. Harris: May Plaintiff's Exhibit 3 be shown to the witness?

(Plaintiff's Exhibit 3 handed to the witness.)

Q. (By Mr. Harris): Mrs. Noble, would you look at Plaintiff's Exhibit 3 for identification and read it over and see if, after you have read it over, that assists you in any way in refreshing your recollection as to the list that you saw that evening?

A. This looks like a photostatic copy of it.

Q. Well. I want you to answer my question if

(Testimony of Lida Andra Noble.)

you can. A. I would say definitely it was.

Q. Well, my question——

The Court: Read the question.

Mr. Harris: Listen to my question.

(Question read by the reporter as follows:

“Mrs. Noble, would you look at Plaintiff’s Exhibit 3 for identification and read it over and see if, after you have read it over, that assists you in any way in refreshing your recollection as to the list that you saw that evening?”)

A. It does refresh my memory. [91]

Q. Now, what is your testimony then as to what the list that you received on February 29, 1952, what its contents were?

Mr. Toulouse: I object to that. The list is still the best evidence. She says that she had no recollection as to what is on the list. Therefore, the list is the best evidence and whatever may or may not have been on it.

The Court: The objection is overruled. Will you read the question that is before the witness?

(Last question read by the reporter.)

The Court: Well, if you are going to have the contents read——

Mr. Harris: No. Just her recollection.

The Court: Well, the objection is sustained to the question. The question, in effect, in my opinion, calls for her to state the contents of a written document.

Mr. Harris: Oh, I see.

(Testimony of Lida Andra Noble.)

Q. (By Mr. Harris): Mrs. Noble, now after having refreshed your recollection with Plaintiff's Exhibit No. 3 for identification, will you state what your recollection is now of the contents of the list that you saw on February 29, 1952?

A. It had the name of our Guild, the Dr. Edward Lincoln Smith Guild, on it. It had a list of liquors [92] and the number of bottles beside each name of the liquor.

Mr. Harris: All right. Your witness.

Cross-Examination

By Mr. Toulouse:

Q. Mrs. Noble, do you know where the original of that list is? A. No, I don't.

Q. You have no way of identifying that as a photostatic copy of the list? A. No.

Q. And you don't know whether or not that is or is not a copy, do you? A. No.

Mr. Toulouse: That is all.

Redirect Examination

By Mr. Harris:

Q. To whom did you give that list, the original?

A. I gave it to Mr. Johnsen and told him to give it to his wife.

Mr. Harris: All right. That is all.

The Court: Step down. [93]

(Witness excused.)

Mr. Harris: May Mrs. Noble be excused?

Mr. Toulouse: No objection.

The Court: Mrs. Noble may be excused.

Mr. Harris: Mr. Turner.

DEAN S. TURNER

called as a witness by and on behalf of plaintiff,
having been first duly sworn, was examined and
testified as follows:

Direct Examination

By Mr. Harris:

Q. Would you state your name, please?

A. Dean S. Turner.

Q. And your address, Mr. Turner?

A. 10419 S.E. 13th Street, Bellevue, Washington.

Q. And what is your occupation, Mr. Turner?

A. Enforcement officer for the Washington State
Liquor Control Board.

Q. And how long have you been so employed?

A. Since June of 1947.

Q. Were you serving in that capacity during the
period beginning on July 1, 1951, and ending on
May 8, 1952? A. I was. [94]

Q. Do you know of the White Center Athletic
Club? A. I do.

Q. Do you know where it is located?

A. I do.

Q. Where?

A. 9616-17th S.W., Seattle, King County, Wash-
ington.

(Testimony of Dean S. Turner.)

Q. And have you ever been to that establishment? A. I have.

Q. When were you there the first time?

A. The first time was in May of 1950.

Q. Well, let me bring you up to this period now. When were you there, the first time you were there, during the period July 1, 1951, to May 8, 1952?

A. October 26, 1951.

Q. What time of the day were you there?

A. Just after midnight, about 12:15.

The Court: What was the date?

The Witness: October 26, 1951.

Q. Who accompanied you there, if any one?

A. Enforcement Officer Patrick E. Burke and Enforcement Officer Harold W. Booth of the Washington State Liquor Control Board, and other officers of the Board and the County Sheriff.

Q. Did you go on the premises on that particular evening? [95] A. I did.

Q. Did you see any of the defendants there at that time? A. I did.

Q. Who, if any of them, did you see?

A. Russell Felton.

Q. Do you see him here in court today?

A. I do.

Q. Would you mind signifying, if you can, from the witness stand which one of the defendants Russell Felton is?

A. He is the man to my left on the front bench at the right-hand side of the courtroom.

(Testimony of Dean S. Turner.)

Mr. Harris: May it be stipulated that he has pointed out Russell Felton?

Mr. Spiller: Yes.

Q. (By Mr. Harris): What, if anything, did you see Mr. Felton do on that particular evening?

A. He was tending the bar inside the premises.

Q. What, if anything, did you do on that particular evening?

A. I entered the premises and seized the intoxicating liquors which were found there behind the bar.

Q. How much liquor did you seize? [96]

A. Four hundred and twenty bottles of spiritous liquor and some two hundred-plus bottles of beer, malt liquor.

Q. The four hundred bottles of liquor that you seized, was that all unbroken seals or broken seals?

A. A part of it was the unbroken seal, that is full and sealed with the Government seal. Part of it was open bottles.

The Court: How many bottles of malt liquor did you say you found?

The Witness: In excess of two hundred, your Honor. I believe 250 or 270 bottles and cans, a combination.

Mr. Toulouse: Your Honor, I am going to continue to permit this witness to be interrogated as to what he did, but subject to the Court's permitting me to say that I will make a motion to suppress this evidence if it appears that this individual seized this—whatever he seized—without a warrant and not pursuant to some lawful authority.

(Testimony of Dean S. Turner.)

The Court: You had better make your objections. You will have to make the record, and I will rule on your objections at the time made.

Q. (By Mr. Harris): Were there any Federal officers with you at this time? [97]

Mr. Toulouse: Just a minute. I object to and move to strike what the witness has heretofore testified to with respect to his seizing 420 bottles of spiritous liquor on the ground that there is now no showing as yet of any relevancy between this liquor and the White Center Athletic Club or any showing as to its ownership or any showing as to the fact that the sealed liquor was liquor or any showing that it was the property of any of these defendants or any showing that any of these defendants were selling it.

The Court: The motion is denied. Objection overruled.

Q. (By Mr. Harris): Were there any Federal officers with you on this occasion?

A. No, just the State and County officers executing a search warrant from the State Court.

Q. And was there anything unusual about the bottles that were not broken, about the seals, or the ones that were broken?

A. Well, not particularly unusual. Some of the opened bottles have what we call pouring spouts, dispensing spouts, in the neck of the bottles.

Q. Did you have a conversation with Mr. Felton at that time? [98] A. I did.

Q. Who else was present?

(Testimony of Dean S. Turner.)

A. Officers Booth and Burke of the Washington State Liquor Control Board.

Q. What, if anything, did you say to Mr. Felton at that time?

A. I inquired of the operation, was he selling whisky?

Q. What did he say, if anything?

A. No. He was selling service, operating a bottle club.

Q. Is that what Mr. Felton said? A. Yes.

Q. Did you ask him anything else?

A. I asked him to see the Federal retail liquor dealer's tax stamp.

Q. And what, if anything, did he say then?

A. He did not know if they had one or, if so, where it was.

Q. Did you have any further conversation with him?

A. Not that comes to my memory at this moment, counsel.

Q. All right. Did you go out to the White Center Athletic Club on a subsequent occasion?

A. I did. [99]

Q. When was the next time that you went there?

A. January 18, 1952.

Q. Who went with you, if anyone?

A. Enforcement Officers Patrick E. Burke and H. W. Booth of the Washington State Liquor Control Board.

Q. What time on November 18th—excuse me—January 18th, 1952, did you go there, if you recall?

(Testimony of Dean S. Turner.)

A. In the evening, before the midnight hour, about 11:20—11:30 p.m.

Q. And were there any Federal officers with you? A. None.

Q. Did they know that you were going there, as far as you know?

Mr. Spiller: I object to that, if the Court please.

The Court: The objection is overruled.

A. I have no knowledge that they knew.

Q. And why did you go there?

A. To execute a State search warrant.

Mr. Toulouse: I object to that. Why he went there is immaterial.

The Court: The objection is overruled.

Q. (By Mr. Harris): Did you see any of the defendants there on that occasion? [100]

A. I did.

Q. Who, if any? A. Bert DePierris.

Q. And what, if anything, was he doing when you arrived there?

A. He was tending the bar on the premises.

Q. Did you see any other of the defendants there on that occasion? A. I believe not.

Q. Did you see any liquor on the premises at that time? A. I did.

Q. And where did you see it?

A. Behind the bar.

Q. And how much of it did you see?

A. Well, there were about 150-plus bottles of spiritous liquor and a quantity of malt liquor, beer.

(Testimony of Dean S. Turner.)

Q. And what, if anything, did you do with that liquor?

A. Took it into custody, seized it under the warrant.

Q. And were there any broken or unbroken seals in that liquor?

A. There was both, both unbroken seals and broken sealed liquor.

Q. Are you able to estimate the number of each type? [101]

A. There were several unbroken. I don't know the exact count, counsel.

Mr. Harris: May this be marked?

The Court: It may be marked Plaintiff's Exhibit No. 6 for identification.

(Inventory and Receipt marked Plaintiff's Exhibit 6 for identification.)

Q. (By Mr. Harris): Mr. Turner, you are being handed Plaintiff's Exhibit No. 6 for identification. Will you state what that is, if you know?

A. A receipt for property seized by the Washington State Liquor Control Board.

Q. Is that the original or a copy?

A. A copy.

Q. To whom did you give the original, if any one?

A. To Hon. Guy B. Knott, Justice of the Peace, Seattle Precinct, King County, Washington.

Q. And is this an exact copy of the original?

A. Yes, made at the same time as the original

(Testimony of Dean S. Turner.)

by use of carbon paper, made several copies.

Q. Who made that?

A. Officer Booth and I, in combination, made this list. [102]

Q. And in whose possession has it been since that time?

A. A part of the Washington State Liquor Control Board file in possession of the Board in my office.

Q. And is it part of the official records of that Board? A. It is.

Q. And you brought them here today, have you?

A. I did.

Q. And does your signature appear on there?

A. It does.

Q. And the signature of Mr. Booth?

A. Yes.

Q. Have you stated what it is?

A. A list of spiritous and malt liquors.

Q. Pertaining to what?

A. Pertaining to the property seized from the White Center Athletic Club, Incorporated, 9616 17th S.W., King County, Washington, on January 18, 1952, at the hour of 11:20 p.m.

Mr. Harris: I will offer Plaintiff's Exhibit 6.

Mr. Spiller: No objection.

The Court: Admitted.

(Plaintiff's Exhibit 6 received in evidence.)

Q. (By Mr. Harris): Did you have a conversation with Mr. DePierris on January 18, 1952?

(Testimony of Dean S. Turner.)

A. I did.

Q. Where was this conversation?

A. Behind the bar and again in the reception room at the front of the premises and then in the automobile later.

Q. All right. Let's take the first one then, behind the bar. Who else was present when you had the conversation?

A. Officer H. W. Booth and Officer Patrick Burke of the Washington State Liquor Control Board.

Q. What, if anything, was said to Mr. DePierris at that time?

A. We asked if he was selling liquor. He told us no; he was selling a service, charging only for serving liquor.

Q. Was that all at that time?

A. That was the major portion of that particular conversation.

Q. Who was present at the time you had the conversation with him in the lobby or the entrance?

A. Well, it is the entrance between the check room and the bar room itself. Officer Burke was present there. [104]

Q. What, if anything, did you say to Mr. DePierris at that time and what did he say to you?

A. I inquired to see the retail liquor dealer's Federal tax stamp for the premises.

Q. What did he say, if anything?

A. He didn't know about the stamp, in fact, didn't know what such document was, and I proceeded to explain to him that it was a Federal tax

(Testimony of Dean S. Turner.)

for selling liquor. He again told me he wasn't selling liquor; he was only serving liquor for a service charge.

Q. You say you had another conversation with him in an automobile? A. Yes.

Q. And who, if any one besides yourself and Mr. DePierris, was present at that time?

A. Officer Booth of the Liquor Board.

Q. And what did you say to Mr. DePerris at that time and what did he say to you, if anything?

A. Well, that was principally Mr. Booth's conversation. I was in it and listened to it. It was about the Federal stamp, the Federal retail liquor dealer's tax stamp.

The Court: He has not answered the question and has not said he did not know the answer. Do you withdraw the question? [105]

Mr. Harris: Under the circumstances that he himself did not conduct the conversation, yes.

Q. (By Mr. Harris): What did you overhear Mr. DePerris and Mr. Booth discuss in the automobile on that particular occasion?

A. The Federal retail liquor dealer's tax stamp. Mr. Booth explained to him what the document was and what it was for, and he seemed to be enlightened by the conversation.

Q. All right. After January 18, 1952, did you go out to the White Center Athletic Club on another occasion? A. I did.

Q. When was that? A. February 4, 1952.

Q. And do you recall what time it was then?

(Testimony of Dean S. Turner.)

A. Late evening, 10:45 p.m.

Q. And with whom did you go?

A. Enforcement Officer Patrick Burke of the Liquor Board, Enforcement Officer Harold Booth of the Liquor Board, and other officers.

Q. Were there any Federal officers with you on that occasion? A. No. [106]

Q. To your knowledge, do you know whether or not they knew about your going out there at that time? A. No.

Q. Why did you go out there?

A. To execute a State search warrant to search for liquor.

Q. What happened, if anything, after you arrived there?

A. We entered, stood by the bar a few moments. The room was in partial darkness, a film being shown. Observed Mr. Peter Desimone and Mr. Bert DePierris tending the bar there, pouring liquor into glasses and serving the same and putting the money in the cash register.

Q. Did you see any of the other defendants there that evening?

A. Mr. Harold Hopkins was at the door.

Q. What door?

A. The door to the check room which opens both into the barroom and into the reception room.

Q. What, if anything, was he doing there at the door? A. He was tending the door.

Tre Court: Who was that?

The Witness: Harold Hopkins. [107]

(Testimony of Dean S. Turner.)

Q. (By Mr. Harris): Did he see you, to your knowledge?

A. After we came in, he did, yes.

Q. What if anything did you do after you got inside?

A. Went behind the bar, talked to Mr. Desimone, seized thirteen bottles of spiritous liquor.

Q. Were the seals on those thirteen bottles broken or not broken?

A. Some of both, counsel.

Q. Did you have any conversation with Peter Desimone on that particular occasion?

A. I did.

Q. Who else was present when you had that conversation?

A. Officer Harold Booth of the Liquor Board.

Q. Where was this conversation held?

A. Behind the bar and again in the same location up at the front of the building next to the check room.

Q. In the conversation that you had with Mr. Desimone behind the bar, what did you say and what did he say, if anything?

A. We asked which of the bottles was house stock, meaning property of the club. Mr. Desimone pointed out thirteen which he identified to us as house stock.

Q. And are those the thirteen bottles that you just mentioned that you seized? [108]

A. Yes.

(Testimony of Dean S. Turner.)

Q. Was there any further conversation there behind the bar at that time?

A. Not particularly.

Q. Did you then have a conversation with him out in the vestibule or the waiting room?

A. Yes, I did.

Q. Who was present then?

A. Officer Patrick Burke.

Q. What if anything did you say to him then and what if anything did he say to you?

The Court: You mean Patrick Burke?

Mr. Harris: No. Excuse me, Your Honor.

Q. (By Mr. Harris): Who else beside Mr. Burke and yourself were present at this conversation?

A. Mr. Desimone and Mr. Hopkins a part of the time.

Q. What was the conversation there?

A. He inquired of Mr. Desimone to see the retail liquor dealer's Federal tax stamp for the premises.

Q. And what did he say, if anything?

A. That they didn't need one because they weren't selling whiskey; they were just selling service.

Q. Was Mr. Hopkins present when this conversation was had? [109]

A. He was there in that area, general area, the small checkroom.

Y. Did he participate in the conversation?

A. Not with me personally.

(Testimony of Dean S. Turner.)

Q. Did you have any further conversation with Mr. Desimone at that time?

A. Yes. We talked about the tax stamp at some length, and I made the rather broad comment to Mr. Desimone that he had been in the game a long time; he should know better than to operate a liquor place without a tax stamp; that he was flirting with the penalty to McNeill Island, and it was more of a joke than anything else, and we laughed it off as such.

The Court: Read the entire answer.

(Last answer read by reporter.)

Q. (By Mr. Harris): Was there any further conversation then at that time with Mr. Desimone?

A. Yes, quite a lot. I don't recall specifically the exact conversations. We talked for some time about the stag party that was in progress there. It was a Lions Club stag party, 250 male patrons there. General conversation about the party, about the liquor.

Q. Now, did you see Mr. DePierris there that evening?

A. Yes. He was aiding Mr. Desimone in attending at [110] the bar.

Q. Did you have a conversation with him at that time?

A. I asked him about the liquor service. He, too, informed me he was selling service, not liquor.

Q. Did you have a conversation with Mr. Hopkins there at that time?

A. Yes, I did.

(Testimony of Dean S. Turner.)

Q. Who else was present then?

A. A Mr. Blumquist and Mr. Tinker and Mr. Desimone.

Q. And what was the conversation that you had with him at that time?

A. Mr. Hopkins informed me that the Lions Club, which was holding this stag party, had brought a quantity of liquor there to be served that evening consisting of some fifty bottles of liquor, Scotch, vodka, and bourbon and blended whiskies.

Q. Was there any further conversation?

A. Not particularly.

Q. Did you go back to the White Center Athletic Club at any time after the February 4th stag party?

A. I did.

Q. When was that?

A. That was the early morning of March 1, 1952.

Q. At approximately what time?

A. 1:30 I would judge. Officer Burke and I [111] went there with other officers of the Liquor Board and the Sheriff's Department.

Q. Were there any Federal officers there with you at that time? A. No.

Q. As far as you know, did they have any knowledge of your going there on that particular occasion?

A. They had no knowledge.

Q. Why did you go there?

A. To execute a State search warrant.

Q. What, if anything, did you find going on when you arrived there?

A. There were a great number of people there

(Testimony of Dean S. Turner.)

drinking at tables. Mr. Felton and Mr. DePierris were both tending bar. There had been a large crowd of ladies there. I spoke with a few of them.

Q. Do you know what function, if any, was taking place?

A. There had been a gathering of the Dr. Edward Lincoln Smith Orthopedic Guild group there that evening on February 29th, which was Leap Year evening, and this was the early morning following that, past the midnight hour.

Q. When you saw Mr. DePierris and Mr. Felton, where were they?

A. They were both behind the bar. [112]

Q. And what, if anything, did you do?

A. Walked behind the bar, talked with them, seized the spiritous liquor and the malt liquor found there behind the bar.

Q. How much liquor did you seize?

A. In excess of fifty bottles of the spiritous liquor.

Q. And were any of those bottles sealed with unbroken seals?

A. There was a combination of both, some full sealed bottles and some open bottles and some bottles with pouring spouts in the neck of the bottle.

Q. Did you have a conversation with Mr. Felton at that time?

A. Yes, I did.

Q. Where?

A. Behind the bar.

Q. Who else was present?

A. Well, Mr. DePierris and Mr. Burke.

(Testimony of Dean S. Turner.)

Q. And what, if anything, did you say to Mr. Felton and what did he say to you?

A. We discussed the service of the liquor. He told me he was serving the liquor which had the marking "Dr. Smith Guild" on it to the group that were there attending this dinner dance; that he was charging 50c per glass [113] served; that it was a service charge; that the liquor had been brought there by the Dr. Edward Lincoln Smith Guild.

Q. Did you ask him anything about that?

A. Yes. I questioned him in more detail about who had brought it, and he didn't know. In fact, he hadn't been there when it had been brought in, he said.

Q. Did he say anything further regarding that?

A. Well, he had just been told by his supervisor that it had been brought there, by Charlotte Fulford.

Q. Did you have any conversation with Mr. DePierris at that time?

A. Yes.

Q. Who was present during this conversation?

A. Officer Burke again, I believe.

Q. And what, if anything, did you say, and what did Mr. DePierris say on that conversation?

A. We again discussed the service of the liquor and how it was carried on. Mr. DePierris explained that he, too, was serving the drinks of liquor to the Guild group at 50c a glass; that it was a service charge being charged.

Q. Now, after March 1, 1952, did you return again to the White Center Athletic Club?

(Testimony of Dean S. Turner.)

A. Yes, on March 12, 1952. [114]

Q. At approximately what time then?

A. That was early evening, 10:30 or 10:00, early evening March 12th.

Q. Who, if any one, was with you on that occasion?

A. Officer Patrick Burke of the Liquor Board and two or more officers from the Board and the Sheriff's office.

Q. Were there any Federal officers with you?

A. No, sir.

Q. As far as you know, did they have knowledge that you were going out there?

A. They had no knowledge as far as I know.

Q. Why did you go?

A. To execute a State search warrant.

The Court: May I interrupt? Will you repeat the name, nothing else, of that person you said some one told you reported delivery of the liquor by the Orthopedic Guild members? I just want the name of that person.

The Witness: Charlotte Fulford, F-u-l-f-o-r-d.

The Court: You may proceed.

Q. (By Mr. Harris): Who was there, if any one, when you arrived on March 12, 1952?

A. Bert DePierris was behind the bar. There were a group of people seated at the bar on the bar stools. [115]

Q. Were you able to observe what, if anything, they were doing?

(Testimony of Dean S. Turner.)

A. They were consuming drinks from glasses.

Q. Where was Mr. DePierris when you arrived?

A. He was behind the bar.

Q. And did you see any liquor there?

A. I did.

Q. How much?

A. I believe 52 or 56 bottles on that occasion of spiritous liquor and a quantity of malt liquor, beer.

Q. And those bottles of spiritous liquor, were the seals broken or unbroken, as far as you know?

A. Some were full and sealed; others were broken.

Q. Did you have a conversation with Mr. DePierris at that time? A. Yes.

Q. Where was that conversation?

A. That was behind the bar.

Q. Who else was present, if any one, at that time?

A. I am not sure that any one was at that conversation, counsel.

Q. What, if anything, did you say to him at that time?

A. I asked him about the Federal tax stamp as a retail dealer in liquor.

Q. And what did he say, if anything? [116]

A. That he didn't have one; that he was not selling liquor; that he was selling service.

Q. Now, after March 12, 1952, did you return there again to the White Center Athletic Club?

A. Yes, I returned April 6, 1952.

(Testimony of Dean S. Turner.)

Q. At approximately what time?

A. Early morning, after 1:00 o'clock in the morning.

Q. Who, if anyone, was with you on that occasion?

A. Officer Patrick Burke and Officer Harold Booth of the Liquor Board, and other officers.

Q. Were there any Federal officers with you at that time? A. None.

Q. As far as you know, did they have any knowledge of your going out there on that occasion?

A. As far as I know, they had no knowledge.

Q. Why did you go?

A. To execute a State search warrant.

Q. And who, if any of the defendants, did you see there on that occasion?

A. Russell Felton.

Q. Where was he when you arrived?

A. Tending bar. He was behind the bar.

Q. Did you see any liquor there at that time?

A. I did. [117]

Q. And where did you see the liquor?

A. Behind the bar.

Q. And how much?

A. I believe 22 bottles of spiritous liquor.

Q. Did any of those bottles have seals unbroken?

A. No. They were all broken sealed bottles, all open bottles. Some had pouring spouts in. Some had caps on them.

Q. Did you have any conversation with Mr. Felton at that time? A. I did.

(Testimony of Dean S. Turner.)

Q. Who was present?

A. Officers Burke and Booth of the Liquor Board.

Q. And where was this conversation?

A. Behind the bar.

Q. And what, if anything, did you say to Mr. Felton and what did he say to you?

A. Well, Mr. Felton was quite angry that Mr. Desimone and Mr. DePierris had just left according to him. He was quite angry that he had been left there, as he put it, to hold the bag on this occasion, and he informed me and the other officers that the liquor there, the 22 bottles, was house stock, that he was selling the drinks from the bottles at 50c a glass.

Q. Anything else? [118]

A. That he had been retained by Mr. Peter Desimone to tend the bar that night.

The Court: We will be at recess for five minutes.

(Recess.)

The Court: May the record show that all parties are present at this time as before the recess?

Mr. Harris: The record may so show.

Mr. Toulouse: Yes, Your Honor.

Mr. Spiller: Yes, Your Honor.

Mr. Harris: You may interrogate.

Cross-Examination

By Mr. Toulouse:

Q. On these various dates that you have related during the period 1951 and 1952 when you seized liquor, where is that liquor?

(Testimony of Dean S. Turner.)

A. That has been destroyed by the State Liquor Board under the rules of seized contraband.

Q. It has been destroyed?

A. Yes, it has.

Q. Was that liquor at any time to your knowledge analyzed to determine its nature, of your own personal knowledge, Mr. Turner?

A. No. We made no analysation because we had the [119] sealed liquor in the first five cases.

Q. You made no determination with respect to any of the liquor that was seized during that period of time?

The Court: Do you mean by that—no chemical determination?

Mr. Toulouse: Yes.

A. No. No chemical analysis was made. The usual smell test was accomplished.

Mr. Toulouse: That is all.

Mr. Harris: I don't think the witness has completed his answer.

The Court: You may ask him another question if you wish, Mr. Harris.

Redirect Examination

By Mr. Harris:

Q. Have you completed your answer as to what test you did conduct as to the broken sealed bottles?

A. The smell test, counsel.

Mr. Harris: That is all.

Mr. Toulouse: That is all. Now, I would like to

ask if Mr. Turner can remain in attendance as we may desire to call him for the defense if the Court please.

The Court: He will do that. Remain in attendance [120] in the future during the trial unless the Court otherwise directs.

You may step down from the stand.

(Witness excused.)

The Court: Call the next witness.

Mr. Harris: Mr. Booth.

Mr. Spiller: Might I interrupt for a moment? I notice that Mr. Turner is leaving the courtroom, which is perfectly proper because we wouldn't be calling him until the defense comes in, and unless he wishes there isn't any reason for him to be detained for the rest of the day.

The Court: Mr. Turner, you are excused for the rest of the day. However, you are required to be here tomorrow morning at ten o'clock. You will be here at that time in pursuance of your previous summons.

H. W. BOOTH

called as a witness by and on behalf of plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Harris:

Q. Would you state your name, please? [121]

A. H. W. Booth.

Q. What is your address?

(Testimony of H. W. Booth.)

A. 3235 East 104, Seattle.

Q. And your occupation?

A. Inspector, State Liquor Board.

Q. And how long have you been so employed?

A. On this assignment, about three weeks. Prior to that, I was an enforcement officer for the Liquor Board in excess of six years.

Q. And were you so employed during the period commencing on July 1, 1951, to May 8, 1952?

A. I was.

Q. Did you have occasion during that period of time to go out to the White Center Athletic Club?

A. I did.

Q. Where is that located?

A. 9616-17th S.W., Seattle.

Q. When is the first time you went out there?

A. In June of 1950.

Q. No. I mean within that period of time.

A. That would be October 26, 1951.

Q. And with whom? About what time did you go?

A. About midnight.

Q. And with whom, if any one, did you go?

A. Burke and Turner of the Liquor Board and other [122] County officers.

Q. And who of the defendants, if any of them, did you see there at that time?

A. Russell Felton.

Q. And where was he when you first saw him?

A. He was tending bar.

Q. Were there any other people in the establishment there?

(Testimony of H. W. Booth.)

A. Yes. There was a large crowd.

Q. And what, if anything, were they doing?

A. They were seated at tables. Some were playing automatic devices. Some were at the bar drinking.

Q. Did you have a conversation with Mr. Felton at that time?

A. I may have talked to him. I have no recollection of the conversation.

Q. Now, did you go out there again on another date after October 26, 1951?

A. In January, 1952, on January 18th.

Q. Do you recall approximately when on that day?

A. Prior to midnight, in the late evening.

Q. Who, if any one, went with you on that occasion?

A. Other officers of the State Liquor Board, Turner and Burke.

Q. Who, if any, of the defendants did you see there [123] on that occasion?

A. Bert DePierris and John Stepich.

Q. Where was Mr. DePierris when you first saw him?

A. Behind the bar, acting as bartender.

Q. Where was Mr. Stepich when you saw him?

A. I first saw him on the side of the bar toward the door. He and Officer Burke were in a conversation.

Q. Did you have a conversation with Mr. DePierris at that time?

A. Yes, I did.

(Testimony of H. W. Booth.)

Q. Who else was present?

A. Mr. Turner on the first conversation. There was another conversation in an automobile at which Mr. Burke was also present.

Q. The conversation that you had with him in the automobile, what, if anything, did you say and what did he say?

The Court: This is who?

Mr. Harris: Mr. DePierris.

A. I questioned him regarding an RLD stamp, a retail liquor dealer's stamp, at the club. At his instance, I explained to him what it was.

Q. In so many words, what did you say?

A. I told him it was required by the Federal Government for persons who sell liquor at retail.

Q. What did he say? [124]

A. He was noncommittal. He seemed ignorant of the law.

Q. Did you have a conversation with Mr. Stepich on that particular day? A. I did not.

Q. Did you observe liquor there on that occasion and on the previous occasion that you have mentioned? A. I did.

Q. And you heard Mr. Turner's testimony concerning the condition of the bottles and the number of the bottles, did you not?

A. Yes, I heard some of it.

Q. And would your testimony be substantially the same? A. It would be, yes.

Q. Now, after January 18, 1952, did you go there again? A. On February 4 of 1952.

(Testimony of H. W. Booth.)

Q. At approximately what time?

A. Earlier in the evening, at 11:00 o'clock.

Q. With whom did you go?

A. Again with Burke and Turner and county officers.

Q. What, if anything, was going on when you arrived?

A. The club was darkened. A film was being shown. We gained admittance through the door. The door was ajar so we merely walked in. We watched the proceedings for a [125] while. Desimone and DePierris were behind the bar, and they served a number of customers while we stood there.

Q. Whom did you see behind the bar, if any one?

A. Peter Desimone and Bert DePierris.

Q. What, if anything, were they doing?

A. Tending bar, serving customers.

Q. And did you have a conversation with Mr. Desimone at that time?

A. Yes, I did.

Q. Who else was present?

A. Mr. Turner.

Q. What, if anything, did you say to Mr. Desimone and what did he say to you?

A. I asked him point blank just why he thought he could operate without a retail liquor dealer's stamp.

Q. What did he say?

A. He stated that he was selling service and not liquor.

Q. Any further conversation?

A. He pointed out a number of bottles to us which he stated were owned by the house although

(Testimony of H. W. Booth.)

he didn't say he was selling them. He said they were owned by the club. We had a conversation in particular about a bottle of Old Crow, full and sealed, whiskey, which was seized.

Q. What did he say, if anything, about that?

A. As I recall, the bottle was not marked. He objected to our seizing it.

Q. Did you notice anything unusual about the bottles or the seals on the bottles?

A. The seals had been defaced on some. The Federal strip stamp that goes over the top of the bottle had been defaced so that the numerals weren't legible in some cases.

Q. Did you ask him concerning that fact at all?

A. I don't recall my questioning him, if I did.

Q. Did you have a conversation with Mr. De-Pierris at that time?

A. Not that I recall, sir.

Q. After February 4, 1952, did you go out to the White Center Athletic Club on another occasion?

A. On April 6 of the same year, 1952.

Q. At approximately what time?

A. After midnight.

Q. With whom did you go?

A. Burke and Turner and county officers.

Q. Who, if any one, of the defendants did you see there on that occasion?

A. Russell Felton.

Q. Where was he when you first saw him?

A. Tending bar.

Q. Did you have a conversation with him? [127]

A. Yes.

(Testimony of H. W. Booth.)

Q. Who else was present, if anyone?

A. I participated in the conversation. It was mainly between Felton and Turner and Burke. Felton was disturbed that he had been caught on that occasion. He said that this was the last time for him. Charlotte Fulford also participated in the conversation. She was trying to keep him quiet.

Q. Did he mention any of the other defendants at that time?

A. Yes. He stated that both Desimone and De-Pierris had been there earlier in the evening.

Q. Did you see any liquor there at that time?

A. Yes.

Q. And did you have any conversation with Mr. Felton or overhear any conversation that Mr. Felton had concerning that liquor?

A. At that time he admitted that he was selling the liquor over the bar.

Q. Do you recall how many bottles of liquor were seized at that time, if any were?

A. Twenty or more as I recall. They were all unsealed is my recollection.

Q. Did Mr. Felton say to whom the 22 bottles belonged?

A. Not in so many words, no, sir. [128]

Q. What did he say?

A. I don't believe he was asked who it belonged to.

Mr. Harris: I believe that is all.

(Testimony of H. W. Booth.)

Cross-Examination

By Mr. Spiller:

Q. Was Mr. Turner your superior officer at that time? A. No, sir.

Q. You were both enforcement officers for the Washington State Liquor Control Board?

A. That is correct.

Q. And were upon an equal basis so far as the Board was concerned?

A. With this exception, if I may explain it, Mr. Turner served the search warrant, and that put him in, you might say, the position of bossing that particular operation. With the exception of the raid of January 18, Mr. Turner served those search warrants. On January 18, I served the search warrant I believe.

Mr. Spiller: I have no further questions. I would like to make the same request of this witness as of Mr. Turner, that he be in attendance to be called by the defense.

The Court: While this Court is in session [129] and proceeding with the trial of this case, the Court requests that you be present unless the Court later otherwise directs.

You may step down.

(Witness excused.)

The Court: Call the next witness.

PATRICK E. BURKE

called as a witness by and on behalf of plaintiff,
having been first duly sworn, was examined and
testified as follows:

Direct Examination

By Mr. Harris:

Q. Would you state your name, please?

A. Patrick E. Burke.

Q. And your address?

A. 8835 S.E. 39th, Mercer Island.

Q. What is your occupation?

A. Deputy Sheriff for King County Sheriff's
Office.

Q. How long have you been so employed?

A. Since November of 1953.

Q. Prior to that time, what was your occupa-
tion?

A. Enforcement officer for the Washington State
Liquor Control Board. [130]

Q. How long were you enforcement officer for
that Board? A. Approximately five years.

Q. Were you so employed during the period
commencing on July 1, 1951, through May 8, 1952?

A. I was.

Q. And during that period of time did you have
occasion to go to the White Center Athletic Club?

A. Yes.

Q. During that period of time, when was the
first time that you went there?

A. October 26, 1951.

Q. Do you recall approximately the time?

(Testimony of Patrick E. Burke.)

A. Somewhere near midnight.

Q. Who went with you on that occasion?

A. Officer Turner and Officer Booth and some deputy sheriffs.

Q. Did you see any of the defendants there at that time? A. Yes, I did, Russell Felton.

Q. Where did you first see him there?

A. He was tending bar.

Q. Did you have a conversation with him at that time?

A. Just through overhearing Officer Turner talking to him. [131]

Q. Did you see any liquor on the premises at that time? A. I did.

Q. Where did you see that liquor?

A. On the back bar.

Q. Did you have occasion to go there again after October 26, 1951? A. Yes, I did.

Q. When was that? A. January 18, 1952.

Q. With whom did you go on that occasion?

A. Turner and Booth of the Liquor Board.

Q. Who, if any, of the defendants did you see there at that time?

A. Mr. DePierris and Mr. Stepich.

Q. Where was Mr. DePierris when you first saw him? A. He was tending bar.

Q. Where was Mr. Stepich?

A. I didn't see Mr. Stepich until later in the evening.

Q. All right. Did you have a conversation with Mr. DePierris behind the bar?

(Testimony of Patrick E. Burke:)

A. Yes, at that time I did.

Q. Who else was present?

A. Officer Turner. [132]

Q. What did you say and what did he say, if anything, at that time?

A. My questioning as far as Mr. DePierris was concerned, I was quite disgusted at the operation itself, and I told him such.

Q. That is not quite responsive. Just what did you say to him at that time? What were your words to the best of your recollection?

A. I told him that if I had my way that the place would be closed.

Q. And what did he say, if anything?

A. He made some remark in regards to losing my job perhaps.

The Court: Do you mean that you, Mr. Burke, would lose your job?

The Witness: Yes. That is correct.

Q. (By Mr. Harris): That is Mr. DePierris?

A. Yes.

Q. And was there any further conversation then between you and he?

A. I told him that I had been working there for quite some time, and I expected to work there quite some after that.

Q. Was there anything further then? [133]

A. No, and then later when we were taking him to jail I overheard Mr. Booth's conversation.

Q. In the automobile? A: Yes.

Q. How long after your conversation with Mr.

(Testimony of Patrick E. Burke.)

DePierris behind the bar did you see Mr. Stepich?

A. We had already written the inventory of the liquor that was seized, and that is when I noticed Mr. Stepich.

Q. Where did you see him?

A. Sitting at the bar.

Q. And what, if anything, did you say to him at that time?

A. It was more or less in substance previous acquaintances that I talked to him in regards to.

Q. Did you know Mr. Stepich prior to this time?

A. Yes, I did.

Q. When did you first meet Mr. Stepich?

A. When I was in the service.

Q. During the last war? A. Yes, sir.

Q. Had you seen him previously at the White Center Athletic Club? A. No, sir.

Q. Did that cover the entire conversation that you [134] had with Mr. Stepich at that time?

A. That is correct.

Q. Now, did you go out to the White Center Athletic Club after February 18, 1952? Excuse me. After January 18, 1952. A. Yes, I did.

Q. When did you go out the next time?

A. February 4, 1952.

Q. With whom did you go on that occasion?

A. Officer Turner and Officer Booth and some deputy sheriffs.

Q. And what, if anything, was taking place at the White Center Athletic Club when you arrived there on February 4, 1952?

(Testimony of Patrick E. Burke.)

A. There was a motion picture in session.

Q. Did you see any of the defendants there at that time? A. Yes, I did.

Q. Who?

A. Mr. DePierris and Mr. Felton and Mr. Hopkins—I mean Mr. Desimone instead of Felton.

Q. Would you repeat your answer as to who you saw?

A. Mr. DePierris and Mr. Hopkins.

The Court: What date?

The Witness: February 4, 1952. [135]

Q. When they were showing this movie?

A. That is right.

Q. Where was Mr. Desimone when you first saw him? A. Behind the bar.

Q. Where was Mr. DePierris?

A. Behind the bar.

Q. Where was Mr. Hopkins?

A. In the check room.

Q. Did you have a conversation with Mr. Desimone? A. No.

Q. Did you have a conversation with Mr. DePierris? A. No.

Q. Did you see any liquor on the premises at that time? A. Yes, I did.

Q. Do you recall how many bottles?

A. There were over a hundred bottles on the premises.

Q. Did you have a conversation with Mr. Hopkins? A. No, sir.

(Testimony of Patrick E. Burke.)

Q. What, if anything, did you see him doing?

A. He was standing at the door facing the bar as we entered the premises. Later, when Mr. Turner and Mr. Desimone was in conversation in the check room, Mr. Hopkins was in the vicinity of the check room. It is very small.

Q. Do you know, of your own knowledge, what if any [136] duties he was performing that evening?

Mr. Toulouse: Now, I object to that. It is assuming that he was performing some duties. This witness hasn't testified to that.

The Court: That objection is sustained.

Q. (By Mr. Harris): Do you know what, if anything, Mr. Hopkins was doing that evening?

A. No, sir, I don't.

Q. Now, after the February 4, 1952, visit by yourself at the White Center Athletic Club, did you go back again? A. Yes, I did.

Q. When was that?

A. That was March 1, 1952.

Q. With whom did you go at that time?

A. Officer Turner and deputy sheriffs.

Q. Who, if any, of the defedants did you see there then? A. Mr. DePierris and Mr. Felton.

Q. What, if anything, were they doing when you saw them? A. They were both tending bar.

Q. Did you see any liquor on the premises at that time? A. Yes, I did.

Q. Where was it? [137]

A. Behind the bar.

(Testimony of Patrick E. Burke.)

Q. Did you have a conversation with Mr. Felton at that time?

A. I don't believe I did myself, no.

Q. With Mr. DePierris? A. No, sir.

Q. After March 1, 1952, did you go back again?

A. Yes.

Q. When was that? A. March 12, 1952.

Q. With whom did you go at that time?

A. Officer Turner and deputy sheriffs.

Q. Who, if any, of the defendants did you see at that time? A. Mr. DePierris.

Q. Where was he when you first saw him?

A. He was tending bar.

Q. Did you see liquor on the premises at that time? A. Yes, sir.

Q. Where was it? A. On the back bar.

Q. And did you have a conversation with Mr. DePierris? A. I don't recall that.

Q. After March 12, 1952, did you go back to the White Center Athletic Club again? [138]

A. Yes, sir.

Q. When was that? A. April 6, 1952.

Q. Who went with you at that time?

A. Turner and Booth of the Liquor Board and some deputy sheriffs.

Q. Who if any of the defendants did you see then? A. Mr. Felton and Mr. DePierris.

Q. Where did you see Mr. Felton?

A. Behind the bar.

Q. Where did you see Mr. DePierris?

A. Behind the bar.

(Testimony of Patrick E. Burke.)

Q. What, if anything, did you say to Mr. Felton at that time?

A. During the entrance of the premises——

Mr. Toulouse: I object. He hasn't said that he said anything to Mr. Felton.

The Court: The objection is overruled.

A. I asked Mr. Felton later, after getting behind the bar, where Bert DePierris had been, and Mr. Felton looked as if to point out Mr. DePierris and he was gone.

Q. Do you know where Mr. DePierris went?

A. No, I don't.

Q. Did you have any further conversation with Mr. Felton as to Mr. DePierris? [139]

A. I asked Mr. Felton at the time that I asked where Mr. DePierris had gone. He seemed quite alarmed, and I said: "Well, it looks like you are holding the bag." And he agreed.

Q. Was there any further conversation with Mr. Felton then at that time?

A. There was by Officer Turner.

Q. And what, if any, did you overhear?

A. Mr. Turner asked Mr. Felton in regards to whether or not Mr. Desimone had been on the premises prior to our arrival, and he stated that he had been there.

Q. Did you hear Mr. Felton say anything else?

A. He also told Mr. Turner that DePierris had been there, also.

Q. And did he mention anything else?

A. Officer Turner asked him which bottles were

(Testimony of Patrick E. Burke.)

used as house bottles, which he showed him the bottles which he said was house bottles.

Q. Who showed him the bottles?

A. Mr. Felton.

Q. And where were those bottles located?

A. They were on the back bar.

Q. And were the seals broken or unbroken, if you recall? A. They were all broken. [140]

Q. Did you hear Mr. Felton say anything else?

A. Yes, to substantiate Mr. Booth's question, he did state that this was his last time.

Mr. Spiller: No questions.

The Court: You may step down.

(Witness excused.)

The Court: The Court will recess the proceedings in this case.

Mr. Harris: Before we adjourn, your Honor, may I at this time inquire if Mr. Whittal is present?

(No response.)

The Court: Is he subject to a subpoena?

Mr. Harris: Yes, your Honor, and may I at this time ask the assistance of the marshal in gaining his attendance for tomorrow morning?

The Court: The United States Marshal is directed to assist the United States Attorney in all proper ways in that regard.

Mr. Harris: Thank you, your Honor.

The Court: All of those connected with this case

are excused until tomorrow morning at ten o'clock, and they may retire at this time.

(At 4:00 o'clock p.m., Wednesday, April 21, 1954, proceedings recessed until 10:00 o'clock a.m., Thursday, April 22, 1954.) [141]

April 22, 1954, 10:00 A.M.

The Court: May the record show that each of the defendants, together with his attorneys, is present, and that Government counsel is present?

Mr. Spiller: The record may so show, your Honor.

Mr. Harris: Yes, your Honor.

The Court: You may proceed.

Mr. Harris: At the conclusion yesterday afternoon, your Honor, just to refresh both my own recollection and possibly the Court's, Mr. Burke was on the stand. I had completed direct examination and Mr. Spiller had made the remark in the record that there were no questions. I understand from Mr. Toulouse this morning that he does wish to ask Mr. Burke some questions, but Mr. Burke is not present at this time. So, with the Court's permission——

The Court: There is nothing before the Court regarding Mr. Burke having been excused from the stand, and he is not here to take the stand——

Mr. Harris: ——I am going to call Mr. Whittall.

The Court: You may proceed to do so.

Mr. Harris: Mr. Whittall, will you take the stand? [142]

RODERICK W. WHITTALL

called as a witness by and on behalf of plaintiff,
having been first duly sworn, was examined and
testified as follows:

Direct Examination

By Mr. Harris:

Q. Would you state your name, please?

A. Roderick W. Whittall.

Q. And your address, Mr. Whittall?

A. At the time, 109 East 59, Seattle, Washington.

Q. What is your present occupation?

A. Electrical engineer, U. S. Navy.

Q. Have you ever served in any capacity with
the Washington State Liquor Control Board?

A. Yes, I have.

Q. And in what capacity?

A. As an investigator.

Q. During what period of time?

A. Just during the year of 1952.

Q. Were you so engaged on March 9, 1952?

A. Yes, I was.

Q. Are you familiar with the White Center
Athletic Club? A. Yes, I am. [143]

Q. Have you ever been there?

A. Yes. I was there on March 9, 1952.

Q. At approximately what time?

A. Midnight, 12:15 a.m.

Q. And with whom if any one, did you go there?

A. With another investigator, Berch West.

Q. Did you gain admittance to the club?

(Testimony of Roderick W. Whittall.)

A. I gained admittance by being in a party of friends of Mr. West.

Q. And what, if anything, did you do after you entered the White Center Athletic Club?

A. After being admitted, of course we immediately went to the bar and ordered our drinks.

Q. From whom did you order the drinks?

A. Naturally I ordered from the bartender. Later I learned his name was Bert, other customers speaking of him, calling his name.

Q. And what kind of a drink did you order?

A. A 7-high, whiskey and 7.

The Court: What is that?

The Witness: It consists of whiskey and 7-Up.

Q. And were you served such a drink?

A. By the taste, yes, and color.

Q. And did you pay for the drink?

A. Paid for the drink. [144]

Q. Did you bring any alcohol onto the premises?

A. I did not.

Q. Did you have any there previously?

A. No, I hadn't.

Q. And what, if anything else, happened that evening?

A. Well, of course, after ordering the drink I immediately left the bar and walked over to the so-called one armed bandits and began to play them. When I returned, my drink was there, of course, but the other party had left.

Q. Who is that other party?

A. Berch West, the other investigator. Not knowing what happened to him, I just sat there

(Testimony of Roderick W. Whittall.)

and continued on drinking. Upon completing my approximate second swallow of the drink, I was asked by the other bartender, which was later identified as Russell Felton, if I was with Mr. West, and I said yes, I was, and so he said: "Well, he was a liquor investigator. So you will have to leave." And that is all there was to it. He removed my drink and I left.

Mr. Harris: Your witness.

The Court: Did anybody pay for your drink? If so, who?

The Witness: No, I left the money on the bar myself.

Q. (By Mr. Harris): How much did you pay for it? [145] A. Fifty cents.

Mr. Harris: Your witness.

Cross-Examination

By Mr. Toulouse:

Q. You don't know who, if any one, picked up your money, do you?

A. No. I just left it on the bar and then walked over to the machine.

Q. What day of the week was March 9th?

A. I could not tell you that. I don't remember.

Q. Did you see Mr. West buy eight drinks on that occasion?

A. No. I don't believe at that time he bought eight drinks.

Q. Did you see him buy any drinks?

(Testimony of Roderick W. Whittall.)

A. He bought one for himself.

Q. When you say he bought one, did you see him put money on the bar?

A. We both had our 50c on the bar at that time.

Q. But you never saw any one take that?

A. No. I did not.

Mr. Toulouse: That is all.

Mr. Harris: That is all. [146]

Mr. Harris: May Mr. Whittall be excused?

Mr. Spiller: No objection.

The Court: You may be excused from further attendance as a witness in this case. Step down.

(Witness excused.)

Mr. Toulouse: Your Honor, Mr. Burke is here, and if you will read the record back, I did not waive any cross-examination of Mr. Burke. I have checked with the reporter myself, and I want to examine Mr. Burke.

The Court: You have that privilege.

PATRICK E. BURKE

recalled as a witness by and on behalf of plaintiff, having been previously sworn, was examined and testified further as follows:

Cross-Examination

By Mr. Toulouse:

Q. Mr. Burke, you have heretofore testified that on October 26, 1951; January 18, 1952; February 4, 1952; March 1, 1952; March 12, 1952, and

(Testimony of Patrick E. Burke.)

April 6, 1952, that in the company of Mr. Turner and Mr. Booth, enforcement officers of the Washington State Liquor Control Board, that you went to the premises located in White Center known as the White Center Athletic Club and at that time either served a search warrant or aided the other two officers [147] in the execution of a search warrant, is that correct?

A. That is correct, with the exception of two dates.

Q. What two dates?

A. March 1 and March 12, Officer Booth was not there.

Q. Officer Booth was not with you but Officer Turner was? A. That is correct.

Q. Now, you were out there for the enforcement of what is known as the Steele Act in the State of Washington, is that correct?

A. That is correct.

Q. And it is your practice, is it not, and the practice of Officer Turner and Booth, on an occasion of raiding a place, or particularly on the occasions that I have given you, that is on those particular dates that I have given you, to make a determination as to the status of the individuals at the particular place that is raided, is that not true?

A. That is true.

Q. Now, did you make a determination as to the status of Russell Felton? Wasn't he an employee of that establishment at that time?

A. Yes. I would say he was.

(Testimony of Patrick E. Burke.)

Q. On those occasions? A. Yes. [148]

Q. And did you make a determination as to the status of Mr. DePierris, that he too was an employee of the establishment on the particular dates that I have indicated?

A. When he was present?

Q. Yes. A. Yes.

Q. And you also made a determination, did you not, that their employer was Mr. Desimone, is that correct? A. Yes. That is correct.

Q. And that to the best of your knowledge and understanding from your conversation with Mr. Turner and Mr. Booth, that was likewise their understanding as to the status of those particular individuals, is that correct?

A. As to answering for what they thought, I have assumed that they took the same attitude that I did, yes.

Q. Well, you talked it over with them, did you?

A. Yes.

Q. The information that you had was in common on each of those occasions? A. That is true.

Q. And they all reached the same determination as to the status of Felton and the status of DePierris on all of those occasions, that it was that of an employment relationship with Mr. Desimone?

A. That is true. [149]

Q. As a matter of fact, that information was forthcoming from both bartenders, was it not?

Mr. Harris: I will object. I don't think that question is clear enough.

(Testimony of Patrick E. Burke.)

Q. (By Mr. Toulouse): I will ask you this: Did you know that Mr. Felton was employed elsewhere during the period January to March as a bartender in town?

A. He told us he was, yes.

Q. And that he was merely a part-time bartender out there? A. That is correct.

Q. And you likewise knew, did you not, that Mr. DePierris had come up from Portland in about December of 1951 and that he started tending bar out there on or about that time?

A. There was some conversation with regards to that, yes.

Q. And Mr. DePierris furnished that information, didn't he? A. Yes, he did.

Q. Now, on the occasions that I have given you in my first question and on those dates that I have indicated, the liquor was seized by yourself, Mr. Booth and Mr. Turner because, in your opinion at that time, there was a [150] violation of the Steele Act, is that not correct? A. That is true.

Mr. Toulouse: That is all.

Mr. Harris: That is all.

The Court: Step down.

(Witness excused.)

Mr. Harris: May Mr. Burke be excused?

The Court: Any objection?

Mr. Toulouse: None.

The Court: You may be excused, Mr. Burke, and go on about your business.

HAROLD E. DAGGETT

called as a witness by and on behalf of plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Harris:

Q. Will you state your name, please?

A. Harold E. Daggett.

Q. What is your address, Mr. Daggett?

A. 14559 22nd N.E., Seattle.

Q. What is your occupation?

A. I am an investigator for the Alcohol-Tobacco Tax [151] Division of the Treasury Department, United States Government.

Q. And where are you stationed?

A. Seattle.

Q. How long have you been so employed?

A. Between 25 and 26 years.

Q. Were you employed in that capacity during the year 1952? A. I was, sir.

Q. In the exercise of your duties, did you have occasion to come in contact with an establishment known as the White Center Athletic Club?

A. I did, sir.

Q. When? A. On May 6 of 1952.

Q. How was that contact or what did you do?

A. I went out to 9616 17th S.W., and as I entered the place, on the left there was a cloakroom, and there was a girl tending the cloakroom who I later was pointed out as Charlotte Fulford. I went up to her and put down my hat and started as if

(Testimony of Harold E. Daggett.)

I was going in, and she said: "Are you a member?" And I said: "No, I am not, but I am supposed to meet a member here." And she said: "What is the member's name?" And I give her some name of a business man that I had picked off a business establishment as I was coming along, and I don't recall just what [152] the name was now, and she said: "Just a minute." And she went through a door into the other department, and when she came back she had Mr. Stepich with her. Mr. Stepich asked me who I was looking for, and I told him the name, and he knew who it was and he went in and came back and said: "Well, they are not inside. They are not in there." And I said: "Well, can I use your phone a minute," and I went over and used the phone and I came back and said: "Well, they said it is all right. They are coming over in a few minutes and will meet me inside."

So he stood there for a few minutes, and finally he said: "Okay," and I went into the establishment. It is a big quonset-hut establishment, and as you go in the door there is a big square bar, and I went up and sat on a stool at the bar, and Russell Felton was tending bar, and I ordered a whiskey with a ginger ale chaser, and he served it to me, and I paid him 50c for it, and I sat there, and there was, oh, quite a few people in there.

In the back of the bar, towards the back side, there was a lot of bottles, and they were serving food at these tables, and there was, I think, three waitresses serving food. There was two cocktail

(Testimony of Harold E. Daggett.)

waitresses serving drinks only, and then there were several seated at the bar. I stayed in there from about 8:00 o'clock until about 11:30. I bought four drinks for myself while I was in [153] there, and I played the slot machines for a while, and then I got up and left and went over and had something to eat, and I came back about 12:30 of the following morning, and I went back in there again, and the establishment was about the same only there were less people there. They seemed to have dragged out and I believe they had stopped serving food. The food waitresses were not working. And I stayed in there until about 2:00 o'clock in the morning, and I bought four more drinks of whiskey from Russell Felton.

Mr. Stepich was in a small room near there. He was in several times while I was there and in this small room. I went up to him and bought a roll of dimes and played the slot machines with them.

Q. Did you have any conversation with Mr. Felton other than just ordering drinks?

A. Well, the only thing, when he first came up, I said: "My name is Ed. What is yours, sir?" And he said: "Well, they call me Russ." Outside of that, there wasn't a great deal of conversation. He was a pretty busy man.

Q. Did you bring any liquor with you when you went into the establishment? A. No, I didn't.

Q. Had you left any there previously or had any one [154] else? A. No.

Q. Did you order from any particular bottle

(Testimony of Harold E. Daggett.)

that you selected? A. No, I didn't.

Q. What bottle was used to pour these drinks?

A. Just the bar bottle that was on the bar.

Q. And how much did you pay for each drink that you bought? A. Fifty cents.

Q. On each occasion? A. For each drink.

Q. Did you test the drinks in any way?

A. Yes. I drank them.

Q. And was there alcohol in the drink?

A. Yes, there was. There was whiskey.

Q. And how long have you been a liquor inspector? A. Twenty-five years.

Q. Have you conducted similar examinations before? A. Many many times.

Q. Are you certain that these drinks contained alcohol? A. Certain.

Q. And are you certain that the man you saw in there that evening was Mr. Stepich, and also Mr. Felton? [155] A. Yes, I am.

Q. Can you point them out to us?

A. Yes. The second one from the end this way (indicating) is Mr. Stepich, and the one on the far end here is Mr. Felton. He was the bartender, and the man over there is the one that let me in.

The Court: I do not understand the identification of the person last referred to.

Mr. Harris: I would like the witness, your Honor, to be permitted to leave the witness stand and point out the individuals.

The Court: He may do that.

The Witness: (Standing before the defendant-

(Testimony of Harold E. Daggett.)
and indicating.) This is the bartender here.

The Court: What is his name, if you know?

The Witness: Russell Felton. And this is the man that let me in the door, Mr. Stepich.

(Witness returns to the stand.)

Mr. Harris: May the record show that Mr. Daggett has resumed the witness stand, your Honor, and that there are no further questions.

The Court: You may cross-examine.

Cross-Examination

By Mr. Toulouse: [156]

Q. Mr. Daggett, you went out to the White Center Athletic Club for the purpose of determining whether or not they were selling whiskey out there?

A. Yes, sir.

Q. When you were there, during that period of six hours, I assume that that is about right, isn't it? You were there from 8:00 until 11:30 and you were there from 11:30 until——

A. From 12:30 to 2:00. I was there from 8:00 to 11:30 and went out for an hour and came back at 12:30 and was there until about 2:00.

Q. During that period of time you drank eight drinks? A. That is right.

Q. You are charged with the obligation to collect the occupation tax under Title 26, Sec. 3253 of the Act?

A. I have authority. I am charged with enforcing the Act. I have authority to collect, but I am

(Testimony of Harold E. Daggett.)

not charged as a collector. I am an investigator, criminal investigator.

Q. Will you describe to the Court what sort of a stamp tax we are herein concerned with?

A. A retail liquor dealer's tax stamp which is a receipt for money for the taxes paid as a retail liquor dealer as an occupational tax.

Q. And that occupational tax is for how much money? [157]

A. Fifty dollars.

Q. And how long is this stamp good for?

A. One year.

Q. What is the fiscal year of the stamp?

A. The fiscal year starts on July 1 and ends June 30.

Q. In other words, you were interested in finding out whether or not this \$50.00 stamp tax was posted in this establishment?

A. No, I was not, because I had already searched the records and knew that there was no tax there, and that they had not paid the tax. I had searched the records in my office and also in the Director's office in Tacoma, and knew that the taxes had not been paid on this establishment.

Q. In other words, there would have been one stamp tax due for the entire establishment?

A. Correct.

Q. Now, it is the establishment that is required to have the stamp, is that not correct?

A. That is correct.

Q. In short, if the White Center Athletic Club

(Testimony of Harold E. Daggett.)

had the one stamp, you would have twenty-five bartenders selling under that one annual stamp, is that correct? A. Correct.

Q. And it is the obligation of the establishment?

A. If it was at one place.

Q. Yes, I say at that particular place.

A. At that particular place, yes.

Q. And it is the obligation of the establishment to have that stamp, is that correct?

A. Correct.

Q. Under the law they are required to have it posted, are they not? A. That is right.

Q. Now, did you ask Mr. Felton whether or not he knew that this establishment did not have that stamp?

A. No, because I knew they didn't have that stamp.

Q. Answer my question. A. No.

Q. Did you ask Mr. Felton that question?

A. No.

Mr. Harris: I think he answered the question, your Honor, and further explained his answer.

The Court: Objection is overruled. Counsel has properly interrogated the witness up to this point in this connection now mentioned, and the objection is overruled.

Q. (By Mr. Toulouse): You have identified a Mr. Stepich? A. Yes. [159]

Q. During that period of five hours, you say that you got some coins from Mr. Stepich. Where was that? By the coin operated machines?

(Testimony of Harold E. Daggett.)

A. Where I got the coins from?

Q. Yes.

A. It was through a little window there that is at the front of the building. I think it is a Dutch door or something that goes in there, and he was back of that, and I went up there and got a roll of ten cent pieces from him.

Q. It was that portion of the club, though, devoted to coin operated machines, was it not? There were three things going on. There was a bar; there was a provending of food; and there was a section devoted to the coin operated machines?

A. No. It is all in one big room.

Q. I realize that, but there were three things going on? A. That is right.

Q. Now, did you ever see Mr. Stepich behind the bar selling or offering for sale any whiskey?

A. No, I didn't.

Q. In your investigation of this place, did you determine who owned the premises out there?

A. Yes, I did. [160]

Q. And who owned the premises?

A. I searched the records.

The Court: Please answer the question directly.

A. Peter Desimone owned them up until September of 1951, when the Brooks Realty Company acquired them.

Q. And they acquired them by virtue of a condemnation proceeding, is that correct?

A. I wouldn't know as to that. The records just show they were acquired by the Brooks Realty

(Testimony of Harold E. Daggett.)

Company on, I believe, September 18 of 1951, and that Peter Desimone had owned them since 1943.

Q. All right. Now, it is a fact, is it not, that in your examination of all the records you did not find the name of John Stepich, Harold Hopkins, Russell Felton or Bert DePierris in any way, shape, manner or form connected with any interest in the real estate or in connection with the personal property located in the White Center Athletic Club?

Mr. Harris: I object. There are two portions of that question—first of all, real estate, and then personal property. I am going to object to the question because it is compound and ask that the question be broken down.

The Court: This is an intelligent witness. The objection is overruled. [161]

A. The incorporation papers of the White Center Athletic Club show that Mr. Stepich is president and was at the time of the incorporation of the White Center Athletic Club. As far as the real estate, it showed that Peter Desimone owned the real estate from 1943 to September of 1951 when the Brooks Realty Company acquired the real estate.

The Court: Now, you haven't answered the question. He asked you with reference to these particular individuals what was the fact about ownership of the real estate, for one thing.

The Witness: As far as I know, your Honor, that is my full knowledge of what the records say as to the real estate ownership.

(Testimony of Harold E. Daggett.)

The Court: Then what do you know about personal property? Is that in the question?

Mr. Toulouse: Yes, it is.

The Witness: I know nothing about personal property.

Q. (By Mr. Toulouse): Now, you discovered, did you not, that the White Center Athletic Club was a charitable corporation formed about 1946?

A. I discovered that it was a corporation. I don't know as to the charity. It was incorporated.

Q. Did you discover that it had been dissolved?

A. As far as I know, it has never been dissolved. The records don't show that it has ever been dissolved.

Q. Do the records show the corporation taxes for the years 1947, '48, '49, '50 and '51 were not paid to the State Treasurer of the State of Washington?

A. I didn't go into that. I wouldn't know.

Q. Did you, in the course of your investigation, examine whether or not Mr. DePierris, Mr. Felton, or Mr. Hopkins was in any way connected with or an officer of or director or stockholder of the White Center Athletic Club?

A. I examined the records in the State case that showed where Mr. Hopkins had signed under oath that he was the secretary-treasurer of the White Center Athletic Club.

Q. Now, I will ask you whether or not you examined the statement of officers and directors of the White Center Athletic Club on file in the County

(Testimony of Harold E. Daggett.)

Auditor's office? A. I did.

Q. State whether or not Mr. Felton's name appeared on any of those documents. A. No.

Q. State whether or not Mr. DePierris' name appeared on any of those documents.

A. No. [163]

Q. State whether or not Mr. Hopkins' name appeared on any of those documents. A. No.

Q. State whether or not Mr. Desimone's name appeared on any of those documents. A. No.

Q. State whether or not Mr. Stepich's name appeared on any of those documents.

A. Yes, as president.

Q. And that record was in 1948, is that not correct? A. I believe that is correct.

Q. And that there is no record showing who was president for the year 1951 or 1952 or whether or not, for that matter, the corporation even had an existence, is that not correct?

A. That is correct.

Q. Now, your search of the records disclosed that the Brooks Realty Company owned the real estate from June of the year 1951 until July 1, 1952?

A. September 18, 1951.

Q. From September 18, 1951?

A. That is right.

Q. Until this date, as far as you know?

A. As far as I know.

Q. Now, did you examine the Brooks Realty Company [164] papers? A. I tried to.

Q. You tried to? I will ask you this: Did you

(Testimony of Harold E. Daggett.)

find Mr. DePierris' name in connection with the Brooks Realty Company? A. No.

Q. As an officer, director or stockholder?

A. No.

Q. Did you find Mr. Felton's name as an officer, director or stockholder? A. No.

Q. Did you find Mr. Stepich's name as an officer, director or stockholder? A. No.

Q. Did you find Mr. Desimone's name as an officers, director or stockholder? A. No, sir.

Q. Did you find Mr. Hopkins' name as an officer, director or stockholder? A. No.

Q. Now, from September of 1951, did you make any determination from the record as to who was the lessee of the premises known as the White Center Athletic Club and owned by the Brooks Realty Company?

A. I couldn't find any Brooks Realty Company. I [165] tried but I couldn't find any Brooks Realty Company.

Q. Did you find a lease to one Tom Maloney?

A. No, sir.

Q. Did you find any evidence of any lease upon the part of any one of these defendants of those premises? A. No, sir.

Q. Or any lease upon the part of the White Center Athletic Club, Inc., this charitable corporation? A. No, sir.

Mr. Harris: I object to that question, your Honor. As yet we have no evidence that the White

(Testimony of Harold E. Daggett.)

Center Athletic Club, Inc., is a charitable organization, so I object to the form of the question.

Mr. Toulouse: I think he has testified to the fact. He has testified to it.

The Court: You asked him the question a few minutes ago about whether or not——

Mr. Toulouse: I will ask it again.

The Court: Very well. There was some mention of the word “charitable” in the question.

Mr. Harris: And his answer to that was: “I don’t know anything about the charity part of it.”

Q. (By Mr. Toulouse): Mr. Daggett, the articles of incorporation of the White Center Athletic Club, Inc., you examined, did [166] you not?

A. I examined them as to the officers. There are two or three pages of them, and I examined them as to the officers and took all of the officers’ names and address. I didn’t examine it as to the why’s and wherefore’s of its inception.

Mr. Toulouse: That is all for myself. Mr. Spiller has some questions.

Mr. Spiller: May I question the witness?

The Court: No. The Court does not approve of that.

Mr. Spiller: Will the Court indulge me then when I ask them through Mr. Toulouse?

The Court: You may consult with Mr. Toulouse and if Mr. Toulouse wishes to ask other questions, he may do that.

(Mr. Spiller consults with Mr. Toulouse.)

(Testimony of Harold E. Daggett.)

Q. (By Mr. Toulouse): How long have you known Pete Desimone?

A. Oh, 25 years I guess, pretty close to it. I knew him when he first opened up the Fiesta Club out at 85th and Greenwood. That was right after liquor came in. He had an establishment out there. I have known him off and on since then.

Q. How long prior to May 6, 1952, did you know that [167] Pete Desimone operated the White Center Athletic Club?

Mr. Harris: I am going to object to that.

The Court: You may ask him if he knew how long prior to that date he operated it.

Q. (By Mr. Toulouse): Did you know that Mr. Pete Desimone operated the White Center Athletic Club?

A. Only hearsay. I didn't know. I have never seen Mr. Desimone there or Mr. Desimone has never told me that he operated it.

Q. What was your object in going out there on May 6?

A. To determine whether liquor was being sold there or not—if they were carrying on the business of a retail liquor dealer.

The Court: A few moments are indulged for final conference between co-counsel, after which I wish Mr. Toulouse, if he has any further questions, to go ahead and ask them without a conference every time a question is asked.

(Conference between Mr. Toulouse and Mr. Spiller.)

(Testimony of Harold E. Daggett.)

Q. (By Mr. Toulouse): Mr. Daggett, you testified that you picked a name off a storefront in White Center and told Charlotte Fulford, a person who was later identified as Charlotte Fulford, that you were a friend of that particular business [168] man, is that correct? A. Correct.

Q. Now, what did you next do? You are in the cloak room, are you not?

A. No. I am in the entrance hall.

Q. What did you do then?

A. When I first went in, I just tossed my hat on the counter and started as if I was going in, and she said: "Just a minute. Are you a member here?" And I said: "No, but I am going to meet a member here." And she said: "Who is the member? Who were you going to meet here?" And I gave her a name, and she said: "Well, wait a minute." And I stood there and she went back out into the other room and came back with Mr. Stepich.

Q. Now, when you say she went into the other room, what room is that?

A. Well, there is a connecting, in the main room, there is a connecting door between the cloak room and the main barroom.

Q. Can you see the main room from the cloak room? A. Yes.

Q. Now, what took place after Mr. Stepich came out? Could you see where he came from?

A. No, sir.

Q. He came from the area where the patrons

(Testimony of Harold E. Daggett.)

were [169] either eating or sitting at the bar?

A. That is right, sir.

Q. Now, what took place then?

A. Mr. Stepich asked me again who I wanted to see and I give him this name agin.

Q. He asked you this in the cloak room?

A. He was in the cloak room. I was in the entrance hall.

Q. Was Charlotte Fulford with him?

A. That is right.

Q. Standing with him? A. Yes.

Q. They were behind the counter? A. Yes.

Q. And you were on the other side of the counter in the cloak room? A. That is right.

Q. At this point can you see the interior of the barroom? A. I couldn't at that point.

Q. You couldn't see it?

A. No. I was standing back a little bit.

Q. What took place next?

A. He asked me about this name that I had given him and then he left and went back towards the door [170] to the other place, and when he came back, he said: "He isn't here. He isn't in there."

Q. Did he say anything else?

A. He repeated the name two or three times before he went back, and then he said: "Oh, yes, I remember him. I'll see if he is here." And he came back out and said: "He isn't here," And I asked him: "Well, could I use your phone?" And he said: "Yes. It is on the wall there." And I went over.

(Testimony of Harold E. Daggett.)

Q. Where was the phone located?

A. The phone was over to the right of the cloak room on the wall, just to the left of the entrance door.

Q. Was it a pay phone or a private phone?

A. A pay phone.

Q. As you go to the phone, where is Mr. Stepich?

A. He is in the cloak room.

Q. How far is that from the phone?

A. A matter of fifteen feet I would say.

Q. He is not within earshot of your using the phone? A. No.

Q. Can he see you? A. Yes.

Q. What happens next?

A. After I got through using the phone——

Q. Who did you call? [171]

A. I called my boss, Mr. Sides, and told him I was out at the White Center Athletic Club trying to get in.

Q. Where did you find Mr. Sides?

A. At home.

The Court: I have asked counsel to avoid further interruptions of each other. If it occurs again, I will have to terminate the cross-examination.

Q. (By Mr. Toulouse): Now, Mr. Stepich did not hear whom you called or hear your conversation? A. No.

Q. Is it a closed phone booth? A. No.

Q. And what did you do next?

A. I just turned to Mr. Stepich and said——

(Testimony of Harold E. Daggett.)

Q. It is 15 feet away. You didn't turn to him. You walked up to him.

A. No. I just turned around, about 15 feet away, and I said: "Well, it is O.K. He said he would be over right away." I turned around towards the door to go in there, and he stood there for a minute or two and then he said: "O.K." and the door clicked and I pushed it open and went in.

Q. Where did Mr. Stepich go?

A. He was in the cloak room when I went [172] in.

Q. Where did he go after you went in the back room when the door clicked?

A. I haven't any idea.

Q. Where was Mr. Stepich standing when the door clicked?

A. He was standing back of the bench—like that is in the cloak room. He was standing in the cloak room.

Q. Was Charlotte Fulford there?

A. That is right.

Q. Did Mr. Stepich have his hat on?

A. No.

Q. When was the next time that you saw Mr. Stepich after you entered the back room?

A. Oh, it wasn't so very long after that that he walked out into the barroom and——

Q. How long after?

A. Oh, not more than five minutes.

Q. Where were you?

A. I was sitting at the bar having a drink.

(Testimony of Harold E. Daggett.)

Q. Where did he go?

A. He just seemed to wander around through there. He didn't seem to have any particular aim. He just walked around and walked back.

Q. How long did you watch him?

A. Oh, a minute or two. [173]

Q. And you never saw him the remainder of the evening?

A. Yes. I saw him back of this—I went up and bought some dimes off him to play the slot machines.

Q. How long a period of time did you observe him paying out on the coin-operated machines?

A. Well, the fact of the matter is I didn't know he was there until I asked the bartender for some dimes, and he said: "You get your dimes over there. Go over there and they will give you some change." And I went over to where he pointed, over to that window, and Mr. Stepich was there, and I got a roll of dimes from him.

Q. And that is the only other time that you saw Mr. Stepich?

A. That is right.

Q. While you were in the club?

A. That is right. Outside of the fact of seeing him come out into the club room and go back in there, why, I didn't see him.

Q. Did you make any arrests that night?

A. No, I didn't.

Q. Did you advise Mr. Stepich that there was no Federal stamp at that establishment?

A. No, I didn't.

Mr. Toulouse: That is all.

Mr. Harris: That is all. [174]

The Court: That is all. You may step down.

(Witness excused.)

The Court: At this time the Court will be at recess for about ten minutes.

(Recess.)

The Court: All are present as before the recess. You may resume the interrogation.

Mr. Spiller: If the Court please, the defense has asked the witness Booth to remain in attendance, and there is no further need for him.

The Court: Do you wish to excuse him?

Mr. Harris: Yes, your Honor.

The Court: Mr. Booth, you are excused and need not remain longer in attendance at this trial.

Mr. Harris: At this time, your Honor, the Government would just like to refresh its recollection as to the exhibits. May I compare my records with those of the Court and Clerk?

The Court: You may.

Mr. Harris: Plaintiff's Exhibits 1, 2, 4, 5 and 6 have been admitted in evidence.

The Clerk: That is right, according to my records.

The Court: That is right. I would like to state this reminder as to No. 2, that it was for the limited purpose stated. [175]

Mr. Harris: Yes, your Honor, likewise No. 1.

The Court: Limited as stated at the time?

Mr. Harris: Yes, your Honor.

The Court: Exhibit No. 3 has been identified, but my records show it has not been admitted.

Mr. Harris: That is right.

With that understanding, the Government rests.

The Court: Is there anything further to be done with respect to No. 3?

Mr. Harris: No, your Honor.

The Court: The defendants may now proceed.

Mr. Toulouse: At this time, if it please the Court, the defendants renew their motion to strike Plaintiff's Exhibit 1 for the limited purpose for which it was offered, on the ground, first, that it is incompetent. It is incompetent because there is no showing, and there is nothing in the evidence to show that the defendant Harold Y. Hopkins is the same Harold Y. Hopkins who signed the jurat in Exhibit 1, and even assuming that there was some evidence that Harold Y. Hopkins is the same Harold Y. Hopkins that signed the jurat in Plaintiff's Exhibit 1, as to the defendants Stepich, Desimone, Felton, and DePierris, that out-of-court declaration of Hopkins would be irrelevant, immaterial and hearsay as to such defendants. Furthermore, that it would be irrelevant and immaterial [176] to prove, assuming that it was properly identified and established as being the signature or the jurat of one of these defendants on trial, to establish this subject matter of the jurat. In short, it would not be the best evidence as to whether or not the self-serving declarant Harold Y. Hopkins declared in the jurat was the secretary-treasurer of the White Center Athletic Club, a corporation, or was not the

secretary-treasurer of the White Center Athletic Club, a corporation, and that in any event the declaration therein contained would not be binding upon the officers or upon the corporation or upon any of the defendants not present at the time of the making of the declaration, assuming that it was made by one of the defendants on trial herein.

The Court: I wish to hear from Mr. Harris in response to this objection.

Mr. Harris: Yes, your Honor. May I call your Honor's attention to the date that the declaration was made, the 29th day of March, 1952. The Government suggests that the motion should be denied and resists such motion to strike on the basis that this was during the period alleged in the indictment concerning which a conspiracy is alleged to have existed. This is a declaration of a co-conspirator as to his position in the club, the White Center Athletic Club. Whether the club was in [177] fact in existence is not material, because that issue is not on trial. The issue is whether or not he held himself out or ever declared or made any suggestion as to any position that he held. If he made that statement during the period in which this conspiracy exists, and if the Court finds there was such a conspiracy, then the statements made by him, even though made out of the presence of the other co-conspirators, are binding as far as the over-all picture of the conspiracy is concerned.

The Court: What is the limitation as you understand it and intended to make it on your offer of this Exhibit 1?

Mr. Harris: Merely, your Honor, that Harold Y. Hopkins who signed that verification, jurat as counsel has chosen to call it, at that time and during the period covered in the indictment held himself out to be the secretary-treasurer of the White Center Athletic Club, a corporation.

The Court: Did you offer it limited as to evidence on that fact as to whether or not he was then or held himself out to be such a corporate officer?

Mr. Harris: Yes, your Honor.

The Court: The objection is overruled.

The Court will apply to the Court as the [178] fact-finder in this case the same cautionary instruction which the Court has given in almost every jury-tried conspiracy case.

Mr. Toulouse: The defendants likewise move to strike Plaintiff's Exhibit 2 on the ground that it is incompetent, irrelevant and immaterial and, furthermore, that as to the defendants DePierris, Felton, Desimone and Hopkins, that the same is hearsay.

Defendant—rather, Plaintiff's Exhibit 2 is incompetent for the reason that it establishes nothing. It establishes that an application for a certificate of registration was made by a corporation purporting to be the White Center Athletic Club. It is purportedly signed by John F. Stepich. There is no evidence in the record to identify the John F. Stepich therein referred to as the John F. Stepich before this Court as a defendant. There is no evidence to support the proposition that John F. Stepich, that that is his signature. There is no evidence that the White Center Athletic Club author-

ized Mr. John F. Stepich to make the application. There is no evidence that John F. Stepich signed as president of the White Center Athletic Club or was in any way connected. On the face of the exhibit, it says "President"—you don't know of what. The date of the exhibit? It doesn't show the date that it was made. It does show apparently [179] that it was received by the Commission on November 2, 1951.

Mr. Harris: I call counsel's attention to the "Send Forms from (date) 7/1/51" filled in at the top of the right-hand corner.

Mr. Toulouse: At the top of the exhibit, as counsel has drawn to my attention, there is penciled in "7/1/51," the business classification number, all in pencil, and the file number, "C578-2851." Now, who may have made or put those dates upon there, we do not know. Who may have sent this to the State of Washington we do not know. Whether or not this is the same document that was originally sent to the State of Washington—you will recall Mr. Montante's testimony that it was not in his exclusive custody and control for the entire period of time; that it was merely in that particular jacket. I also recall that Mr. Montante did not know whether or not that was the signature of Mr. Stepich or whether or not, for that matter, that application was used for any other purpose than to issue a retail sales tax number.

I again submit that it is incompetent for the reasons that I have given; that it is hearsay as to all of the other defendants; that it is completely

incompetent as to the defendant Stepich in the absence of any identification to show that he sent it, to show that that is his signature, to show that he concurred in pushing this [180] application, or that the White Center Athletic Club authorized him to do it or that in fact it was the White Center Athletic Club that did the fact.

The same thing is true with respect to the returns which apparently are signed—this one dated July and August, 1951, apparently received by the Department on November 5, 1951, and signed by Peter Desimone. The return merely shows that there was retailing carried on at a business known as the White Center Athletic Club in a given sum of money, and that a retail sales tax was paid, and that a tax on coin-operated mechanical devices was paid on a certain tax number. There is no showing that it is Mr. Desimone's signature. It is incompetent, irrelevant and immaterial and hearsay as to the defendants Felton, DePierris, Stepich and Hopkins. There is no showing that Mr. Peter Desimone was authorized by the White Center Athletic Club or any of these defendants to make the returns, assuming he did make the return, and there is no evidence, of course, that he did make the return. For that reason, the second page of the exhibit I move that the same be stricken.

The third page of the exhibit, appearing to be an excise return dated November 8, 1951, received November 25, 1951, signed "Harold Y. Hopkins, Secretary, by White Center Athletic Club, Inc.," apparently is a return for [181] retail sales tax.

There is no showing that Mr. Hopkins signed the exhibit. It is hearsay as to the defendants Felton, DePierris, Desimone and Stepich. There is no showing that Mr. Hopkins had authority to act on behalf of the White Center Athletic Club, a corporation, or that he did in fact act on behalf of the White Center Athletic Club, a corporation, or that in fact this return is applicable to the same White Center Athletic Club that is referred to in the indictment. There is no showing who did the typing or who authorized the figures and the typing appearing upon the exhibit, and the same thing is true of the others.

The same subject matter that I have just stated with respect to Harold Y. Hopkins on the preceding page is likewise applicable to the next page of the exhibit, and the same thing is true of the next page of the exhibit which is likewise signed "Harold Y. Hopkins" and referring to January and February retail sales tax returns, and I repeat that as to the last two pages it is hearsay as to the defendants Desimone, DePierris, Felton and Stepich. There is no showing of any authority of Hopkins or that in fact he was the secretary, or is there any showing that the exhibit is a genuine exhibit made by the White Center Athletic Club or for that matter made by any of the defendants on trial here. [182]

The Court: Mr. Harris, do you wish to respond?

Mr. Harris: Your Honor, the testimony as to Plaintiff's Exhibit 2 I think can be viewed and summed up altogether as this: That they have been testified to as being the official records of the Wash-

ington State Tax Department. They have been brought here and identified as such. The purpose of the declaration is to show, as to each, who has signed the same and his official connection with the White Center Athletic Club, Inc., which has been identified here as being operated at 9616-17th S.W., Seattle, Washington, and, of course, with testimony received as to the official capacity in which each of these serve, and I refer to Federal Criminal Rule 27, that official records may be proven in the same manner as in civil actions, and I believe in this case they have been properly identified and properly accepted into evidence for the weight that your Honor sees fit to attach to each.

The Court: This motion is denied. I wish, in connection with the Court's ruling upon this motion to strike Exhibit 2 and the prior motion to strike Exhibit 1, to state that the common design, purpose, agreement and cooperation among the participants are the essence of the conspiracy. To prove that a conspiracy existed and was in operation, it is not necessary that two or more persons entered into a written or express agreement or made any [183] formal declaration acknowledging membership in the conspiracy, but it is necessary, and also proper, to prove by competent evidence beyond a reasonable doubt that they knowingly and intentionally cooperated in the furtherance of a common unlawful plan previously formed.

Conspiracy may exist either to do something unlawful or do a lawful thing in an unlawful way.

On the question of whether the alleged conspiracy

existed as charged, I, as the fact-trier, may not consider any statements made or acts done by any defendant in furtherance of the alleged conspiracy in the absence of other defendants, except against the individual making the statement or doing the acts, unless I am convinced as the fact-trier by the evidence beyond a reasonable doubt that the defendant so making such statements or doing such acts was authorized by another or other of the defendants to make those statements or do those acts in the furtherance of the alleged conspiracy and in such cases it is appropriate for me, as the fact-trier, to consider such evidence only against the defendant actually making the statements or doing the acts and such other defendants as I shall be convinced by the evidence beyond a reasonable doubt, if I am so convinced, authorized the making of such statements or the doing of such acts. [184]

However, where an unlawful object is sought to be effected and two or more persons actuated by a common purpose, pursuing a preconceived plan to accomplish that purpose, act or work together in any manner in furtherance of the unlawful scheme, each party consciously participating therein is a party to the conspiracy, no matter what part he has in the execution of the object or plan, and if two or more persons are proven to have combined together for the same illegal purpose, any act done by one of the parties in the furtherance of the original concerted plan and with reference to the common object is, in contemplation of law, the act of all of those parties.

Likewise, if a conspiracy has been established by the evidence beyond a reasonable doubt, every one of the conspirators is bound by the declarations and acts of the co-conspirators in furtherance of the conspiracy, and under those circumstances the acts and statements of one done and made in the furtherance of the conspiracy are the statements and acts of all the persons who are members of the conspiracy.

Those principles just stated have to be applied by me to these exhibits and all other evidence in the case as of the time of the close of all the evidence, that offered by the plaintiff in chief and on rebuttal, if any, [185] and that offered by the defendant at any and all times during the trial.

Now is there anything else you wish to say by way of motion?

Mr. Toulouse: Yes, your Honor. I except to your Honor's ruling with respect to Exhibits 1 and 2.

The Court: The exception is allowed.

Mr. Toulouse: I likewise move to strike Plaintiff's Exhibit 4, which appears to be a W-2 return for the year 1951, the first page thereof, having some typing on it and not signed by anyone. The date is not quite legible, but it appears to be January 31, 1952, on the ground that it is a self-serving declaration of somebody. There is no evidence to establish that any one of these defendants was connected with, made, or knew of the making or authorized the making of the first page, and so, therefore, it is absolutely incompetent.

The Court: Mr. Harris, what have you to say in that connection?

Mr. Harris: Other than that it was just the official record, your Honor. Just a minute. I thought it was the same number——

The Court: Do you recall any proof by the witness identifying that Exhibit 4 that those papers were supplied to his department by any one of these defendants? [186]

Mr. Harris: Well, you see counsel has taken the first page unit of Plaintiff's Exhibit 4 and right now I am trying to see if there is a corresponding number which would make that material to the other pages, but in view of the statement of counsel and to discourage any further argument on that particular page as to Plaintiff's Exhibit 4—there was no objection at the time—but if they now wish to strike it, I think that might possibly be well taken.

The Court: Do your remarks and motions with respect to Exhibit 4 apply to anything other than the blue-colored sheet?

Mr. Toulouse: Yes, your Honor.

The Court: Then make your statement complete as to each and all parts of that exhibit.

Mr. Toulouse: With respect to the second page, it just merely is an adding machine calculation made by somebody—I don't know who. With respect to the third page, it appears to be an employer's quarterly return, the typing on it saying "White Center Athletic Club, Inc.," dated September 30, 1951, and apparently signed by one purport-

ing to be John Stepich, president, showing W-2 taxes withheld. I object to that on the ground there is no evidence in this record, particularly from the testimony of Mr. Burdick himself to show other than the fact that one [187] year and a half ago he came to a certain office in the Internal Revenue Department and opened up a jacket known as the White Center Athletic Club jacket, under a certain number, and that he pulled this particular paper out of it. There is no showing that Mr. Stepich signed this or that any one of these defendants signed it. There is no showing that the White Center Athletic Club signed it or authorized any person to sign it on its behalf. Mr. Burdick specifically stated that he didn't know who sent it in, how it was received, who prepared it, or anything else in connection with it other than the fact that he had it, that it was in a jacket.

Now, the same thing is true with respect to the next page——

Mr. Harris: May we stipulate that is page 4 you are now referring to?

Mr. Toulouse: It is item 4 in the exhibit, which apparently is a mimeographed form filled in with dates, reciting October 31, 1951, and saying "lack of funds at due date. John F. Stepich, Pres." He doesn't say he is president of what. It doesn't show that this John F. Stepich in this courtroom signed this exhibit or that he had authority to sign it on behalf of any corporation known as the White Center Athletic Club, Inc., [188] or that he had authority from any one of the defendants, that is Felton,

DePierris, Desimone or Hopkins, to sign it, or that he had authority from any officer, director or stockholder of the Athletic Club.

With respect to item 5, it appears on that that "Harold Hopkins, Secretary," signed it. There is typed in—by whom we do not know—"White Center Athletic Club." There is no showing that Harold Hopkins, who is a defendant in this action, signed it, that he signed it in a corporate capacity for any corporation as secretary, or that he was in fact secretary, and there is no evidence to show that with respect to the defendants Felton, DePierris, Desimone and Stepich, he was authorized to sign it on their behalf, or authorized to sign it on behalf of the White Center Athletic Club, or by any of its stockholders, officers or directors.

I submit that Plaintiff's Exhibit 4 proves nothing with respect to any one of these defendants, that the only evidence is that this man Burdick had it in a file in the Internal Revenue Department, and that it has not been sufficiently identified or connected with any of the defendants in this trial.

The Court: What have you to say, Mr. Harris?

Mr. Harris: As to Plaintiff's Exhibit 4, the first item as counsel states and the second item, [189] which contains some bookkeeping or adding machine notations, I have no objection to deleting them from the original exhibit in its present form.

The Court: The Court will later ask the Clerk's assistance in that connection, but now there are three other separate pieces of paper in that exhibit, are there not?

Mr. Harris: Yes. As to those three other pieces of paper, which are the last three, Mr. Burdick testified that these are the official records. The arguments previously advanced in opposition to striking Plaintiff's Exhibits 1 and 2 are now advanced at this time without the necessity of repeating the same. As to what might be classified as item 4, Mr. Burdick's testimony was that that was received with item 3 as one particular entire transaction received from the White Center Athletic Club which bears the same address and with Mr. Stepich holding himself out again as president.

The Court: I wish you would cite some Federal law relating to this matter, Mr. Harris.

Mr. Harris: These being the official records, they can come into evidence for such weight as may be given to them by the trier of the fact, and I recite Federal Criminal Rule 27 which says that the official records may be identified into evidence in the same manner [190] as the civil rules provide, which is set forth in Title 28, U.S.C. §1732 and §1733.

The Court: Let me see about this. Sec. 1732 says:

“In any court of the United States * * *, any writing or record, whether in the form of an entry in a book or otherwise * * *”

I assume you claim this is an official record of the Bureau?

Mr. Harris: Yes, your Honor.

The Court (Continuing):

“* * * made as a memorandum or record of any act, transaction, occurrence, or event, shall

be admissible as evidence of such act, transaction, occurrence, or event, if made in regular course of any business, and if it was the regular course of such business to make such memorandum or record at the time of such act, transaction, occurrence, or event or within a reasonable time thereafter.

“All other circumstances of the making of such writing or record, including lack of personal knowledge by the entrant or maker, may be shown to affect its weight, but such circumstances shall not affect its admissibility. [191]

“The term ‘business,’ as used in this section, includes business, profession, occupation, and calling of every kind.”

Now, if you are proceeding under §1732, it is the first paragraph thereof which is important, which says:

“* * * if made in regular course of any business, and if it was the regular course of such business to make such memorandum or record * * *.”

What is the proof on those two conditions here?

Mr. Harris: That I asked Mr. Burdick if these were the official records. I asked if they were kept in the ordinary course of business and under his supervision, and did he bring them from that position to the courtroom here today.

The Court: I understood that he knew nothing about the making of them. All he knew about them

was that he found them there when he took charge of the files.

Mr. Harris: Found them in the official records.

The Court: He knows nothing about whether or not they were made in the regular course of business of the Internal Revenue office. He made no statement about that, did he?

Mr. Harris: Yes, your Honor. [192]

The Court: About the records being made in the course of business?

Mr. Harris: That these were kept in the regular course of business.

The Court: That is not enough. There are two conditions here:

“* * * if made in the regular course of any business, and if it was the regular course of such business to make such memorandum * * *”

and you have no proof of that that I recall from Mr. Burdick. All he testified to was:

“These are the official records that came into my possession. All I know about them is I found these things in an official file.”

He has not proved anything about those two conditions I have just mentioned, how they were made and what they were made for.

Mr. Harris: He was not present, your Honor, when they were received.

The Court: I do not doubt that, but that does not do away with the requirements of the statute. I think probably he stated every material fact that he was able to do in his testimony, but if that is

what you are relying on, §1732, I say that that does not authorize their admission, but I wish you to consider, each [193] counsel, other sections which I will call to your attention and then, finally, the rule itself.

Sec. 1733 provides:

“Books or records of account or minutes of proceedings of any department or agency * * *”

and there is no proceeding of any department or agency here in question, is there?

Mr. Harris: I thought we had one. I thought the books and records of the Internal Revenue——

The Court: Well, if it is arguable that they are records of proceedings of the Internal Revenue, then it might come under that if the Court takes that view. (Continuing):

“* * * shall be admissible to prove the act, transaction or occurrence * * *.”

That means in the department or agency making the record. There is nothing at issue here about what act took place in the department, is there, or in the agency?

Mr. Harris: The record, that is the only thing.

The Court: Well, insofar as 1733 is concerned, that is concerned with the records of a government agency made as to proceedings in that agency. As I understood, the former position of the Government was, as to these component parts of Plaintiff's Exhibit 4, that they are offered to show acts of one or more of these defendants and [194] not acts of

the Internal Revenue Department. That is the point I am making.

“Properly authenticated copies or transcripts of any books, records, papers or documents of any department or agency of the United States shall be admitted in evidence * * *.”

Now, that is all that 1733 says.

Now, there are other sections. There is another in §661 (a) of 28 U.S.C. It is something that has been enacted by Congress subsequent to 1950, and I do not have it here. Does anyone have available the present §661 (a) of Title 28?

Mr. Spiller: We don't have the title here, if the Court please.

The Court: Mr. Bailiff, will you please ask Mr. Eaton to bring me the current, in effect today, §661 (a), Title 28, U.S.C.?

Now, then, in the meantime, while that is being done, do you have Federal Rules of Civil Procedure 44?

Mr. Spiller: Civil or criminal, your Honor?

The Court: Civil. Did Mr. Harris read a statement in the law that referred to the applicability of civil rules on this question to a criminal case? I have here Rule 44, “Proof of Official Record.”

“An official record or any entry therein, when [195] admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied with a certificate that such officer has the custody.”

Now, he supplied oral testimony. This looks as if it refers to written certificates made in the absence of the trial proceeding. That is the way it looks to me, but if there is some part of it that applies, I will hear counsel's statement on it. Did you cite another rule?

Mr. Harris: That was Rule 27 of the Federal Rules of Civil Procedure, your Honor, that only states that the Rules of Civil Procedure shall govern.

The Court: All right. That is one rule. Have you another one?

Mr. Harris: No, your Honor.

The Court: Have you a copy of Rule 44 before you?

Mr. Harris: No, I have not.

Mr. Spiller: I have, if the Court please.

The Court: Let Mr. Harris see it.

(Mr. Spiller hands volume to Mr. Harris.)

Mr. Harris: These are the Rules of Criminal Procedure, your Honor.

The Court: I wish you to see Rule 44 of the Civil [196] Rules. Does anyone have that?

(No answer.)

The Court: Then look at my copy.

(Court hands volume to the Clerk, who gives it to counsel.)

The Court: I think there ought to be some proof here that shows that these papers emanated from

the White Center Athletic Club in West Seattle, which is the subject of this indictment. Just to get a file from the Internal Revenue Office which concerns some showing of that name or identity without having anyone here testify to its being identified with this particular one, I have some doubt about the propriety of such a procedure, also the fairness of it, and it is difficult for me to accept that proposal.

Is there anything else you want to show?

Mr. Harris: Well, I would like your Honor to reserve your ruling if you could at this time.

The Court: The Court will do that. There is one other section I wish we could see, and that is §661 (a). It is something that has been passed by Congress or by the rule-makers subsequent to 1950. Will both counsel go in chambers and see if you can assist Mr. Eaton in finding that section?

(At this time counsel leave the courtroom and there is a short recess.) [197]

Mr. Harris: I don't find 661 (a) in Title 28, your Honor. The cumulative supplement for 1953 doesn't disclose it, either.

The Court: I have a belief that there was at one time in existence a §661 (a) which bore on this subject. I have that impression, but of course my recollection, like anyone else's, could be inaccurate in this respect. I will reserve ruling on this. Was there anything else?

Mr. Toulouse: Yes, your Honor. The defendants move that Plaintiff's Exhibit 5 be stricken on the

ground that it is incompetent, in the first instance, it being shown as a printed form showing White Center Athletic Club, Inc., coin-operated gaming devices July 1, 1951, to June 30, 1952, apparently showing Peter Desimone as manager and vice-president, dated August 16, 1951, that being the first page. The second page is some penciled transcript, nothing in the evidence to show who prepared this penciled transcript or that it is signed by anyone or that it purports to be signed by anyone. The third page dated 8/16/51 and dated September 1, 1951, being a special tax return printed "White Center Athletic Club." My objection goes to this. Mr. Burdick testified that he found this in the jacket. There is no showing in the evidence that Mr. Desimone made this return, signed this [198] return, or that any of the defendants DePierris, Felton, Stepich or Hopkins authorized him to sign the return, that it was done with their knowledge, with their permission, or in their presence, or that it was done by the White Center Athletic Club, or that Mr. Desimone had any connection with the White Center Athletic Club as an officer, director, or stockholder, or that this signature appearing thereon is that of the Mr. Desimone who is a defendant in this case, or that this document was transmitted—first, who was it prepared by? There is no evidence as to who prepared it. Secondly, there is no evidence who sent it. Thirdly, there is no evidence who signed it. Fourthly, there is no evidence who put it in the jacket. Fifthly, it is only evidence, if at all, of the fact that the Government

had in its jacket three pieces of paper marked Plaintiff's Exhibit 5.

The Court: Is there anything in the papers themselves now comprising that Exhibit No. 5 which identifies the business with this particular one here? Could anyone look at this exhibit and determine that it was the business that has here been at issue in West Seattle?

Mr. Toulouse: If one accepted the truth of the printing "White Center Athletic Club, Inc.," and the address in the printing, "9616 - 17th S.W., Seattle."

The Court: That would be some evidence [199] to indicate the affirmative answer to the Court's question.

Mr. Toulouse: Yes. Of course, it would be my position, your Honor, that that has no relevancy at all with reference to whether or not there is a White Center Athletic Club, Inc., or that in fact this is a return of that particular corporation.

The Court: Does that conclude your remarks?

Mr. Toulouse: That concludes my remarks with reference to Plaintiff's Exhibit 5.

The Court: I wish to hear Mr. Harris' response.

Mr. Harris: Plaintiff's Exhibit 5, your Honor, has been kept as a part of the official records of the U. S. Internal Revenue Bureau, that the name of the establishment is White Center Athletic Club, Inc.; that the business address is 9616 - 17th Avenue S.W., Seattle. The signature is Peter Desimone. The date is 8/16/51.

The Court: That is during the period alleged here of the existence of the conspiracy?

Mr. Harris: That is right, your Honor. Under the signature is the designation of Mr. Desimone as manager and vice-president above the words "State whether individual owner, member of firm, or if officer of corporation, give title."

The Court: The Court's question is answered. Does that apply to any other papers? What about other [200] component parts of that exhibit?

Mr. Harris: Yes, your Honor. The second component part is merely a transcript of the account named "White Center Athletic Club," same address, and is not in any way identified to any person.

The third item of Plaintiff's Exhibit 5 is similar in most respects to the first item of Plaintiff's Exhibit 5, bearing the same signature, the same place, the same address, the same date, and the same capacity.

The Court: Are there only three parts?

Mr. Harris: Three component parts.

The Court: The objections and motions as to Plaintiff's Exhibit 5 are overruled and denied.

Is there anything else?

Mr. Toulouse: I except to the Court's ruling.

The Court: It is allowed.

I will wish you to be brief now because the Court will take the noon recess.

Mr. Toulouse: That is all that I have to offer with respect to my motions. Let the record show that I except to each of the rulings of the Court

with respect to denial of the motions to strike from the evidence Plaintiff's Exhibits 1, 2, 4 and 5.

The Court: The exceptions noted by counsel to the Court's ruling are allowed, but the Court has reserved [201] ruling on the defendants' motion as to Plaintiff's Exhibit 4.

Mr. Toulouse: Your Honor, there is one thought that I would like to leave with the Court with respect to each of these exhibits on the question of competency. There is no showing from any testimony as to any one of the exhibits that would preclude this situation.

The Court: Mr. Toulouse, I am not willing to and find it not convenient to indulge any further time for argument. The Court is satisfied with the rulings made, and no amount of argument can cause me to change in a conspiracy case. We are dealing with conspiracy cases often, and we may have made some mistakes. If so, they were unintentional, and as applied to the present case, they would be unintentional now, but in the light of the Court's past experience in conspiracy cases I am familiar with the argument, and I do not feel that it should cause the Court to change the rulings announced.

I wish counsel during the noon hour would give further consideration to rule or statute which bears upon this, if there is any part of it that we have not already considered. I am especially anxious to have you call that to the Court's attention which bears upon the admissibility or non-admissibility of Plaintiff's Exhibit No. 4. [202]

Mr. Harris: Yes, your Honor.

The Court: I invite your careful study of Rule 44 again, also Title 28, §1732 and §1733. I also wish you would look further to see if there was at any time in force and effect §661 (a) of Title 28, U.S.C., and what were its provisions. That is all I know of in the way of statutory or rule enactment to be considered.

Mr. Spiller: Just for the Court's information only, I have been looking through Title 28 of U.S.C. in reference to §1733 and find that §661 through §667, former title, are now included in Rule 44. That is in the historical and revision note appended to §1733. I just thought I would mention it if the Court wanted to look at it.

The Court: Do you understand from that note that even if 661 did at one time exist as a statutory provision that it has been abrogated by this §1732 or §1733?

Mr. Spiller: That is my understanding, but I would like to check that during the noon hour to make certain of my conclusion on it.

The Court: The Court is now at recess until two o'clock, and all those connected with this case are excused until that time. [203]

(At 12:00 o'clock p.m. Thursday, April 22, 1954, proceedings recessed until 2:00 o'clock p.m. Thursday, April 22, 1954.)

April 22, 1954—2:00 P.M.

The Court: May the record show that each and all of the defendants are present and that their counsel are present, also Government counsel is present.

Mr. Harris: Yes, your Honor.

Mr. Toulouse: Yes, your Honor.

Mr. Spiller: The record may so show.

Mr. Harris: I believe your Honor reserved ruling as to Plaintiff's Exhibit 4. During the noon recess I attempted to secure some authority for your Honor, and I have come to the conclusion that Title 28, §1733, incorporates that section which your Honor previously made reference to as being 661 (a).

The Court: Is it repealed or restated or is it abolished?

Mr. Harris: It is restated, not abolished but restated.

The Court: What part of what section do you think carries it forward? [204]

Mr. Harris: Sec. 1733 of Title 28, in the historical notes and the revision notes and the cases that were decided prior to the 1948 enactment of this particular section of the statute, 661 (a), 665 and 695 are all mentioned.

The Court: Is it in the bound volume? I do not have the note here.

Mr. Harris: Yes, your Honor. I am not going to base my argument on that.

The Court: What part of the language in one of these sections is similar to the old?

Mr. Harris: Well, I think the effort was made, your Honor, to incorporate the various sections of the old section and combine them in one complete section, now being 1733.

The Court: You may proceed with your argument.

Mr. Harris: The case of *Lewy vs. United States*, a 7th Circuit case, decided in 1928—my only reason for referring to that is because it is referred to in a 9th Circuit case, cited therein as some authority.

The Court: Will you give the citation?

Mr. Harris: Excuse me. 29 F. (2d) 462. Having to do primarily with the subheadings 4, 5, 6, 7 and 8, it makes reference in there to the Lewy Brothers who mailed certain information to various companies through [205] the mail. The only thing that was used was letterheads of the company signed by some officer connected with the company.

The court said:

“The books were sufficiently identified and the private ledger properly admitted in evidence. There is, therefore, no point in the suggestion that the testimony of the accountant, Brown, should have been stricken from the record. His statement, taken from the books, is in no way contradicted, but the correctness of it and of the books are in some ways corroborated by the capital stock tax returns for 1924 and 1925, made over defendant’s signature and sworn to by him on behalf of Lewy Bros.”

It is respectfully submitted that the W-2 returns

in Plaintiff's Exhibit 4 are such—they are not capital stock returns——

The Court: Are they signed by anybody?

Mr. Harris: Yes, your Honor. They are over the signature, in one instance, of John Stepich and, in the other instance, Mr. Hopkins, purporting to be in one case the president and in the other case the secretary of the White Center Athletic Club, Inc. [206]

The Court: I thought in some ways they differed as to the relation of those papers to the club in White Center that is the subject of this inquiry. I thought a part of Mr. Toulouse's argument was based on that.

Mr. Harris: I am not arguing and not asking that the first two items of Plaintiff's Exhibit 4 remain in evidence.

The Court: I say that they will be excluded, and the Court makes that ruling now. The Clerk will, as soon as convenient to the Clerk, remove those two from that exhibit unless the Court otherwise directs and delete all identification marks on either one of them and substitute the same marks on some other remaining part of the exhibit.

Mr. Harris: All right. Now I am directing my remarks in my argument to the remaining parts of the exhibit which then would be pages three and four as it now is composed. This is the Employer's Quarterly Federal Tax Return, certain statements contained therein, and the signature of John F. Stepich; title, "Pres."; dated November 7, 1951, White Center Athletic Club, Inc., 9616 - 17th S.W.,

Seattle 6, Washington. Just above the place where Mr. Stepich's signature appears is:

"I declare under the penalties of [207] perjury that this return (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is a true, correct, and complete return."

Then the item four which is attached to that item I have just mentioned is an explanation of delinquency. The name: "White Center Athletic Club, Inc." The date: "Nov. 7, 1951." For comparison with the one just previously mentioned——

The Court: That is sufficient so far as that is concerned. Turn to the next one.

Mr. Harris: The next one, your Honor, which is the last one as it is now composed is in the same form as the one previously, but the name, in place of "John F. Stepich," appears "Harold Hopkins." In place of "Pres." appears the abbreviation "Sec."

The Court: What is stated with reference to on whose behalf it was made?

Mr. Harris: "White Center Athletic Club, Inc.," same address, and the same Seattle precinct number, 6, Washington.

The Court: I thought Mr. Toulouse made the point in argument that there was no such thing as that to identify it with this particular business.

Mr. Harris: That may be the first item of [208] Plaintiff's Exhibit 4 which only mentions the White Center Athletic Club, Inc., the address of the estab-

lishment, but makes no mention of any individual.

The Court: Now, will you compare the situation as to execution and identification of the persons intended to be involved in the papers in Plaintiff's Exhibit 5 with those last two papers in Plaintiff's Exhibit 4?

Mr. Harris: May I see Plaintiff's Exhibit 5, please?

The Court: Yes. The Court has already ruled upon that.

Mr. Harris: Plaintiff's Exhibit 5 contains the signature of another other than those that appear in this exhibit, so if I might see Plaintiff's Exhibits 1 and 2.

The Court: I am not making the point that I wish to see another exhibit bearing execution by these same individuals. It is not that at all, but it is the same kind of identification.

Mr. Harris: The same establishment, the White Center Athletic Club, appears in Plaintiff's Exhibit 5. The same address appears in Plaintiff's Exhibit 5.

The Court: Read the name of the person, if any, purporting to execute the document on behalf of that [209] business in No. 5.

Mr. Harris: Peter Desimone, Manager and Vice-President.

The Court: Of what?

Mr. Harris: White Center Athletic Club, Inc., 9616 - 17th S.W.

The Court: What kind of paper is that?

Mr. Harris: The Special-Tax Return.

The Court: Now, the next sheet in that exhibit.

Mr. Harris: The next sheet, your Honor, in Plaintiff's Exhibit 5, I think also has no relationship, and if counsel wishes, it may be stricken with my approval. However, the last sheet is the White Center Athletic Club, Inc., 9616 - 17th S.W., Seattle 6, Washington, signed by Peter Desimone, and the date, as manager and vice-president.

The Court: Mr. Clerk, will you step down there in the presence of counsel on both sides and take out of No. 4 the first two papers and transfer the Clerk's marks to some appropriate paper in the remaining part of the exhibit?

(The Clerk confers with counsel at the counsel table.)

The Court: Have you now done that?

Mr. Harris: Yes, your Honor. I approve of its present condition as rendered by the Clerk. [210]

The Court: I wish the Clerk to go down to counsel table with Exhibit 5 and take out the papers that Mr. Harris said could be taken out.

(The Clerk confers with counsel at the counsel table.)

The Court: I would like to ask Mr. Harris if he recalls anything in Mr. Burdick's testimony indicating whether or not Exhibits 4 and 5 came out of the same official file?

Mr. Harris: The same official file having to do with the White Center Athletic Club, Inc., located at 9616 - 17th S.W.

The Court: Did you have any reason, and if so, what, for separating the parts of the file into two exhibits?

Mr. Harris: Because, your Honor, these quarterly returns in Exhibit No. 4 consisted of these and other items that were clipped together in this short style, this small, abbreviated style to conform in size, while there were other forms similar to those in Plaintiff's Exhibit 5 which conformed to a different size but which all consisted of the official records of the White Center Athletic Club.

The Court: Do you now deny, Mr. Toulouse, that these two exhibits have in them papers which purport to be signed by one or the other of those persons whose names have been mentioned by Mr. Harris and which signatures were put on the paper on behalf of the White Center Athletic Club?

Mr. Toulouse: Yes.

The Court: Do you deny that the two exhibits contain any papers which do not have signatures on them?

Mr. Toulouse: No, your Honor.

The Court: Was there anything else you wish to say as to Plaintiff's Exhibit 4 now, Mr. Toulouse?

Mr. Toulouse: No. I have nothing to add to my other remarks, your Honor.

The Court: It seems to me that Plaintiff's Exhibits 4 and 5 each stand on the same basis as to admissibility and that each of them is shown on the record to be admissible in evidence here. All objections to each of Plaintiff's Exhibits 4 and 5 are overruled, and each of them is admitted in evidence.

The Court has previously admitted Plaintiff's Exhibits 4 and 5 and that action is now confirmed. Counsel's exceptions to the Court's rulings are allowed.

Mr. Spiller: If the Court please, solely for the advice of the Court, and I would like also for the record to show it, I think that Mr. Harris has unwittingly misread the note referring to 661. I have the history of [212] that before me, if the Court is interested in hearing it.

The Court: Well, that does not alter the Court's ruling. I mean to say it would be interesting to hear what you have to say, but have in mind that it is no longer needful. I do think you ought to be permitted to correct any erroneous statement that you think may have been made about it.

Mr. Spiller: I would like to state to the Court in the first place that former Rule 661 has not been reincorporated in present Title 28, §1732 or §1733. It was specifically and in its entirety repealed in 1948 and a new rule was stated with reference to the admissibility of certain documents.

The Court: Do you see any words or expressions in the new rule which you believe intended to carry forward into future effect any part of old 661 (a)?

Mr. Spiller: I do not, and I am prepared to show that old 661 does no longer exist and that while the Court's ruling might be right under the old 661, it can't be right under the present statute.

The Court: I will hear your further argument on it, but I think the Court is satisfied with the ruling no matter whether that particular statute

approves of it or whether the Court believes some other phase of the law does. However, I certainly shall be glad to hear [213] anything you may have to say. I like to hear from everybody who is to be heard before announcing a ruling, but since you did not understand that and the Court did not know that you were not submitting the matter on Mr. Toulouse's argument, the Court will now hear you, but try to have in mind in the future, not only in this case but in every other case, that the Court wishes to hear from everybody who is to be heard from before the Court announces its decision.

You may proceed.

Mr. Spiller: Thank you, and I will be very brief, if the Court please. I want to say first of all to the Court that the old 661 I was not able to get in its 1940 edition form because the 1940 edition of Title 28 has been removed from both the library on the ninth floor and the library on the tenth floor. Title 28 appears only in its present 1950 edition, which is after this '48 amendment. I do have 661 in its text form contained in *Greenbaum vs. United States*, 80 F. (2d) at 126.

The Court: That was an Arizona case, and the new law was passed while the Coplin case was pending in this Court while this Court was holding its sessions in the Post Office Building in the months of September or October to December—I cannot give the year.

Mr. Spiller: It was 1935. [214]

The Court: The Court received some business records in evidence, and midway in the trial the

Court thought that the ruling of the Court was erroneous and that further proof was needed. The Court struck out of the case all of those admissions and gave counsel an opportunity to again prove them. I think some of them were received finally and some were not. In connection with that case and because of the experience they had in that case, this law was changed.

Mr. Spiller: Yes. Now, I am citing at present only for the text of 661 which I can't get otherwise in the library. It is very short.

“Copies of any books, records, papers, or other documents in any of the executive departments * * * shall be admitted in evidence equally with the originals thereof, when duly authenticated under the seal of such department.”

Now, in 1948, Chap. 646 of Acts of the 80th Congress, Second Session, enacted June 25, 1948, being Chap. 115, there was a new enactment on what official records and documents, both of a private nature made in the regular course of business and of a public nature on file in various public offices, were to be admissible, and to what extent they were to be admissible, and the same act in its concluding section, being §39, provides [215] that the sections or parts thereof of the revised statutes of the District of Columbia, revised statutes of the United States or statutes at large “enumerated in the following schedules are hereby repealed” and then follows a schedule of repeals, including in 62 Statutes at Large at page 993 specifically Title 28, §661,

and I offer this not in criticism at all of the Court's ruling but for the record only.

The Court: Thank you very much.

Mr. Spiller: We submit that under the present rule none of these items should be admitted.

The Court: The objections are overruled and the action of the Court already announced will stand on these exhibits.

Is there anything else to be said?

Mr. Spiller: May we have an exception to that?

The Court: Allowed. Is there anything else to be said by plaintiff before plaintiff rests its case in chief?

Mr. Harris: No, your Honor.

The Court: Does the plaintiff now rest its case in chief?

Mr. Harris: Yes, your Honor.

The Court: The defendants may further proceed now with their case in chief or otherwise proceed in [216] accordance with the law.

Mr. Toulouse: At this time, your Honor, the defendants move that the indictment be dismissed on the grounds that there is a failure of proof to establish the essential ingredients of the conspiracy charged in this case with respect to each of the defendants.

With respect to the defendant Desimone, we submit that the evidence discloses through the witness Turner that at one time he saw Mr. Desimone behind a bar; that Mr. Desimone stated that he was selling service and that he was not selling whisky. At another time Mr. Berch D. West was in the

club, and he said that the doorman at the club talked to Mr. Desimone and that later he was admitted to the club. The other evidence is the evidence which I moved to strike, being Plaintiff's Exhibit 5 which purports to be special tax returns to the Federal Government signed, purportedly, by Peter Desimone. The only other evidence in the case with respect to Mr. Desimone is that he indicated to Mr. Turner that there were fifteen house bottles on the occasion that Mr. Turner was out there at the time of the Lions Club party in 1952. Now that is the only evidence in the case with respect to that particular defendant.

Now, analyzing the evidence with respect to that defendant and in the light of the principle that the [217] evidence with respect to any particular defendant must be considered separately with respect to such defendant and must show acts, conduct, or some other evidence that is clearly referable and points to the joining of a conspiracy or the formation of a conspiracy on or about July of 1951, the first one would indicate a substantive violation perhaps of the Steele Act. If Mr. Turner were believed that Mr. Desimone made the statement that he was selling service and not selling whisky, it is clearly not referable to the fact that Mr. Desimone made an agreement with somebody else to violate the Federal statute.

The next item of evidence, Mr. Berch D. West seeing him at the club, that act, standing alone or together with the other acts, is not referable to an agreement upon the part of all five of these indi-

viduals to evade the payment of a Federal stamp tax for one year, that is to evade the payment of \$37.50 to the Federal Government for the years 1951-52.

The coin returns, if it has any probative value, and it is my position that there is no identification whatsoever that Mr. Desimone signed it or that it was his act, even assuming that he did make the return, that evidence adds up to that Mr. Desimone paid a coin-operated gaming tax to the Federal Government on or about the date that the exhibit bears. It is referable to show that [218] he paid that tax, if the evidence is competent at all, on behalf of the White Center Athletic Club, Inc.

Now, I submit that if you take all of those facts together, add them all up, that, if it shows anything, it show that a business, to wit, a corporation, White Center Athletic Club, Inc., operated a business at that location that sold whisky, which would be a violation of the Steele Act.

The next defendant that I shall discuss the evidence with reference to is John Stepich. The only evidence in the case with reference to the defendant Stepich are the items in evidence offered by Mr. Harris. Here we have an application for a certificate of registration to be issued to the White Center Athletic Club purportedly signed by John F. Stepich, President. It recites in there:

“To sponsor, promote or engage in sporting events, shows, etc., and the training of athletes.”

It recites that the business was formerly operated by the White Center Lions Club, Inc. Apparently

on its face it is a request for a retail sales tax jacket number. Assuming that that has any probative effect, and there is no evidence at all to show that Mr. Stepich signed it in any capacity or that he caused it to be signed or that he caused it to be mailed or that he caused it to be prepared.

The next item is that in November, 1951, a [219] delinquency tax return, being Plaintiff's Exhibit 4, appears in evidence for what it is worth, "John F. Stepich, President." It doesn't say president of what. I assume that "White Center Athletic Club, Inc.," and this typing here, there is no evidence to show who did it, the Government or somebody else. There is no evidence certainly to show that Mr. Stepich or any of these defendants or that the White Center Athletic Club typed that in there.

Now, you take that item and you have the other item that he was once seen talking with Mr. Burke, the enforcement officer, at the bar. Mr. Burke candidly stated that they talked about old times when they were in the Army together, sat and drank at the bar.

The other evidence is Mr. Daggett, who says that he saw Mr. Stepich in the cloakroom out at the premises here in question, and that he next saw Mr. Stepich when he wanted some coins to play in the machine.

Now, add up each item of evidence. Certainly the exhibits with the signatures on them are not probative, in my judgment, of anything or referable to a conspiracy. If they are probative of anything, it is probative of the fact that a corporation, a White

Center Athletic Club, did business at a certain location. There is certainly no evidence before this Court that could convince one beyond a reasonable doubt that John F. [220] Stepich signed this statement or that John F. Stepich authorized it to be signed or that he was in fact president of the White Center Athletic Club or an officer, director or shareholder of the White Center Athletic Club. So I do not see any overt act or any act of a nature acting in concert. There is no connection with the sale of whisky. There is no showing that Mr. Stepich ever sold any whisky at those premises; that he ever offered to sell any whisky at those premises; or that he carried on any business at those premises, and I submit that that falls short of showing a conspiracy to violate this Federal statute.

As to the defendant Hopkins, the only items against the defendant Hopkins, the first one is found in Plaintiff's Exhibit 1 offered for the limited purpose of a jurat, and there is no evidence that Mr. Hopkins signed it. There is certainly no evidence beyond a reasonable doubt that he was the secretary of the White Center Athletic Club, Inc. Clearly his signing that could not be interpreted or referable to the fact that he agreed with one or more of the other defendants to carry on the business at the White Center Athletic Club.

The W-2 return which is the second page of Exhibit 4 stands on the same footing. There is no showing that Mr. Hopkins signed that exhibit. There is no showing [221] that Mr. Hopkins signed that exhibit. There is no showing that he was the

secretary of the White Center Athletic Club. There is no showing that he caused it to be prepared. There is no showing that it was his act that caused it to become a part of the Federal records.

The other item is the excise return which shows, on the third page of Plaintiff's Exhibit 2, the fourth page and the fifth page, purportedly the signature of Harold Y. Hopkins on an excise return to the State of Washington. There is no showing from the witness Montante that he knew that Mr. Hopkins signed the return or that Mr. Hopkins had signed the return on behalf of the White Center Athletic Club or that Mr. Hopkins was an officer, director or shareholder of the White Center Athletic Club. All Mr. Montante knew was that this was in a jacket of excise tax returns and that the State had never used the piece of paper for anything. I submit that the piece of paper doesn't prove anything, that each and every declaration therein, of course, is hearsay and certainly not proof beyond a reasonable doubt that he was connected with the White Center Athletic Club.

The only other testimony, that Mr. Nicolai said that he did not have an independent recollection as to whether or not Mr. Hopkins signed the jurat on Plaintiff's Exhibit 1. He said that he recalled meeting Mr. Hopkins [222] once. He also stated that he did not know whether or not he had received that information from some files and records that he may have had in his possession, that is as to his representative status.

The other evidence is one of the Orthopedic

Guild women who testified here. I think it was Mrs. Noble. I might be wrong. However, one of those women testified that she talked to Mr. Hopkins with respect of the Orthopedic Guild getting dinners at the location, at the White Center Athletic Club, and that he stated that she could. She asked whether or not she could buy drinks, and he stated that she could buy drinks. You recall that the witness testified that she didn't pay Mr. Hopkins and she did not testify that he was in any way in charge of the club, and she did not testify that he was in any way in a representative capacity for the club. She merely testified that he said that she could buy drinks for that particular party.

The only other evidence with respect to Mr. Hopkins is that he was seen by Mr. Turner at the time that Mr. Turner was out there in a conversation that Mr. Turner was having with one of the bartenders in the vicinity of the cloakroom.

Now, I submit that with respect to the evidence on Hopkins, taking each one of the acts, clearly the returns [223] to the Government are only referable, if they are referable at all, to show that a corporation, a White Center Athletic Club, was carrying on a business. There is no evidence to show that Mr. Hopkins ever made a sale, ever bought any whisky, ever stored any whisky. There is no evidence to show that Mr. Hopkins ever received a salary from the club, ever benefited from the sale of whisky or was in any way connected with the sale of whisky, perhaps with the exception of the

Noble woman who said that she talked to Mr. Hopkins. The place of their conversation—my notes don't show that it was established—but she talked to Mr. Hopkins and was told that she could buy dinners at 50c a plate and that she could also buy whisky.

I think that those acts, if they amount to anything, are not acts that would even constitute the substantive crime here in question. Certainly they do not rise to the dignity of showing that he had an agreement of some character with the other defendants or with some other persons unknown.

Now, with respect to the defendant Felton and the defendant DePierris, in the interests of time I will discuss them both, because I think they are on the same plane. The evidence shows that Felton was a part-time bartender. He was seen tending bar. The evidence shows [224] that DePierris was a bartender, that he, too, was tending bar. The evidence further shows that there were conversations with both of these individuals by the Washington State Liquor Board investigators with respect to did this establishment have an RLD stamp. It can be said that Berch D. West and the witness Daggett were out there and saw these people tending bar. Assuming for the moment that they have proved beyond a reasonable doubt that they were selling whisky and did in fact sell whisky and did in fact make sales at that place, it is clearly not referable to show that there was an agreement between them, a preconceived plan or design, to fail to pay the Federal tax.

Now, I say that because here is Mr. Daggett. He has been an investigator for the Federal Liquor Department for some twenty-five years. The Federal statute here in question provides for an occupation tax. The occupation tax attaches to the establishment. The tax to be paid by the establishment is to be posted in the establishment. Mr. Daggett candidly admitted—I should say Mr. Burke candidly admitted there was no question in anybody's mind that the status of these two individuals was that of bare employees. Now, bare employees certainly do not carry on a business or do business in the sense that the real party in interest, the [225] entrepreneur, carries on the business. If anything can be said with reference to Felton and DePierris, one must come to the conclusion that they were not certainly conspiring, that the testimony of the liquor investigators is in fact in October of 1951 that Felton never even knew of the existence of an RLD stamp, and that DePierris didn't even know of the existence of one until January of 1952, as to whether or not one was or was not required.

Now, to convict these two particular men of a conspiracy or to say that their conduct rises to the dignity of a conspiracy is to say that the commission of an overt act which is in itself a violation of the statute, that is the substantive offense charged, which is not charged here—the substantive offense is not charged—you have a conspiracy or an agreement to commit the substantive offense is to permit an inference from the fact that the men had made sales, to say that that and that alone, plus the

fact of their employment, is sufficient to say that they agreed with their employer to violate a Federal statute, whereas obviously, and I think in all fairness the object of the statute is to license an establishment. If the commission of the overt act constitutes a substantive offense itself, constitutes a conspiracy to commit that offense, then that is the only evidence, taking the Government's case most strongly against these two [226] particular defendants, that is clearly referable to a conspiracy. I respectfully submit, your Honor, that certainly as to the defendants Stepich, Felton, DePierris and Hopkins that there is certainly a very, very thin line as to whether or not there was a conspiracy. If there is any conspiracy, I cannot see what fact taken independently is not as consistent with a purpose to violate the Steele Act as it would be to violate the Federal statute. It is inconceivable to me that two employees for a \$37.50 stamp tax required of their employer would agree with their employer to evade the payment of that tax. The very gist of the thing is an agreement not to pay the Federal tax. That is the gist of the conspiracy herein charged.

It is likewise inconceivable to me that you can take the individual acts of John Stepich and jump from those individual acts, taking the Government's case at its best, and find that there was an agreement upon his part not to pay the Federal tax or that he joined this agreement or that he did something to further the non-payment of the tax.

The same thing is true with Mr. Hopkins.

Now, I think the evidence shows that Mr. Desimone operated his place of business, and he, and he alone, operated it. There is no evidence to show that the premises [227] were owned, operated, leased or otherwise under the control of any one of these other four individuals. I can't see anything in the evidence to show an active dominion or control. Taking another view of the evidence, one could say that the evidence could add up to show that the White Center Athletic Club, a corporation, carried on a retail liquor business, and it did not pay its tax. Now, in such event, and I submit that as to these defendants, surely as to these defendants, there is not sufficient evidence to show that they were officers, directors, stockholders or connected with the White Center Athletic Club, a corporation, which may have violated the statute, to support the proposition that there was a conspiracy.

The only concert, if it pleases the Court, that you have here is the concert in place and time. Mr. Stepich is seen there at the bar. Mr. Stepich is seen by Mr. Daggett in the coin-operated section handing out coins. The only concert that you have with respect to Mr. Felton and Mr. DePierris is that they are seen tending bar. Admittedly their status is that of employees.

I respectfully submit that as to those, particularly as to the defendant John Stepich and as to the defendants Felton and DePierris, there is no act upon their part to show that there was a conspiracy with Mr. [228] Desimone or with any other

person to violate this Federal statute. That is all, your Honor.

The Court: Does Mr. Spiller wish to add any argument?

Mr. Spiller: At this time, no.

The Court: The Court believes that the motion should be denied as to each defendant as to each and all parts of the motion. The motion is denied and the challenge is overruled.

The defendants may at this time make their opening statement of what they think the proof will be or otherwise proceed.

Mr. Spiller: If the Court please, we have a few character witnesses here that have been in attendance a long time and have other businesses. May I call them out of order?

The Court: You may do that.

Do counsel intend to waive the opening statement?

Mr. Spiller: Yes, we do.

Is Mr. Winter in the courtroom?

CASPER M. WINTER

called as a witness by and on behalf of defendants, having been first duly sworn, was examined and testified as follows: [229]

The Court: I do not know whether you have observed it, Mr. Winter, but it is difficult to hear one's voice in this room many times.

The Witness: I am a little hard of hearing.

The Court: I think probably we had better put a chair down there where everybody can hear you.

(Testimony of Casper M. Winter.)

(Witness left the stand and sat in a chair directly in front of counsel's table.)

Direct Examination

By Mr. Toulouse:

Q. Will you state your name, please?

A. Casper M. Winter.

Q. Spell it.

A. Casper, C-a-s-p-e-r M. Winter, W-i-n-t-e-r.

Q. Where do you live?

A. At 10614 First Avenue South.

Q. Is that Seattle?

A. Yes—well, outside the city.

Q. In the South End? A. Yes.

Q. Is that near White Center?

A. About five miles from White Center.

Q. How long have you lived around there? [230]

A. Well, I lived around White Center ever since 1918 up until 1930. Then I moved down to First South.

Q. What is your occupation?

A. I am a real estate broker.

Q. How long have you been such?

A. Oh, about since 1931-2.

Q. Continuously up until this time?

A. No, off and on.

Q. Are you presently engaged in that business?

A. Yes.

Q. Are you acquainted with the defendant John Stepich? A. Yes, I am.

(Testimony of Casper M. Winter.)

Q. How long have you been acquainted with him?

A. I knew him slightly around about 1946, when he was in the real estate business.

Q. He was then in the real estate business?

A. Yes.

Q. Did you know him more intimately later on?

A. Yes.

Q. When did you begin to know him more intimately? A. The last five or six years.

Q. Do you know what business he is engaged in?

A. He is an insurance broker.

Q. Do you know how long he has been so engaged?

A. 1949, I think, something like that. [231]

Q. Do you know where he is engaged in that business? A. Yes, I do.

Q. Where?

A. 98-something Delridge Way.

Q. Is that in or near White Center?

A. Well, that is in White Center, inside the city limits.

Q. Do you know what Mr. Stepich's reputation for good character and for being a good citizen is?

A. Yes, I do.

Q. Do you know what that reputation is in White Center? A. Oh, yes.

Q. For how long a period of time have you known of that reputation?

A. Well, ever since I knew him.

Q. And will you state what that reputation is?

(Testimony of Casper M. Winter.)

A. Why, it is very good.

Q. Did Mr. Stepich have an office for the transaction of an insurance business in White Center between June 30, 1951, and July of 1952, do you know?

A. Yes. He was in the insurance business then if I remember right.

Mr. Spiller: I think that is all.

The Court: You may cross-examine. [232]

Cross-Examination

By Mr. Harris:

Q. Mr. Winter, did you know that Mr. Stepich was connected with the White Center Athletic Club in any way?

A. No, I didn't know.

Mr. Harris: That is all.

The Court: You may be excused.

ROBERT BARRETT

called as a witness by and on behalf of defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Spiller:

Q. Will you state your name for the record, please?

A. Robert Barrett.

Q. How do you spell your last name?

A. B-a-r-r-e-t-t.

Q. Where do you reside?

A. 1611 42nd North, Seattle, Washington.

(Testimony of Robert Barrett.)

Q. What is your occupation?

A. I am a field representative for a general agency, insurance general agency. [233]

Q. For what particular agency?

A. Groninger and Company.

Q. Is that a local agency that is local to Seattle?

A. No. We are a wholesaler of insurance.

Q. In the Seattle area?

A. Yes, general agency.

Q. How long have you been so employed?

A. With Groninger and Company for three years, and in that part of the business since 1945, September.

Q. Prior to your association with Groninger, was your experience and occupation in insurance in and about the Seattle area? A. Yes, it was.

Q. Did that also include the White Center area?

A. It did.

Q. Are you acquainted, Mr. Barrett, with Mr. Stepich? A. I am.

Q. For how long have you been acquainted with him? A. Since the fall of 1947.

Q. And has your acquaintance with him been an intimate one? A. It has.

Q. During all that period?

A. Not during all that period but, oh, since 1949. [234]

Q. Are you well acquainted in the White Center area?

A. No, I am not, only where Mr. Stepich is concerned I am.

(Testimony of Robert Barrett.)

Q. Do you have any knowledge yourself of Mr. Stepich's reputation for good character and good citizenship in the White Center area?

A. Yes, I have.

Q. Do you have such a knowledge in any Seattle area?

A. Well, as far as our office is concerned.

Q. That is among the people with whom he deals in your office?

A. Yes, that is right.

Q. By the way, how does he deal with your office?

Mr. Harris: I think that is immaterial, your Honor.

The Court: The objection is overruled. I hope you will not go too much into detail to lay the foundation. Some details are permissible, and this is one instance, but it is bordering pretty closely now on too much.

Mr. Spiller: I will withdraw the question.

Q. (By Mr. Spiller): Do you know what business Mr. Stepich is in?

A. I do.

Q. What is that business? [235]

A. Local agency in insurance.

Q. And for how long has that been?

A. Since the fall of '49, late in the fall of '49.

Q. Now, you say you have a knowledge of his reputation for good character and good citizenship at White Center?

A. Yes, I do.

Q. What is that reputation as you know it?

A. It is very good.

Mr. Spiller: You may examine.

(Testimony of Robert Barrett.)

Cross-Examination

By Mr. Harris:

Q. Do you know where Mr. Stepich lives?

A. Yes, I do.

Q. Your acquaintanceship with him, is that business or social? A. It has been both.

Q. Have you been to the White Center Athletic Club? A. I have.

Q. Were you there with Mr. Stepich?

A. I believe I was.

Q. Do you know what connection he has with it?

A. No, I don't. [236]

Q. Never discussed it? A. No.

Mr. Harris: That is all.

Mr. Spiller: That is all.

The Court: You may be excused.

(Witness excused.)

Call the next witness.

LYLE M. TINKER

called as a witness by and on behalf of defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Spiller:

Q. Will you state your name for the record, please, and spell your last name?

A. Lyle M. Tinker. L-y-l-e M. T-i-n-k-e-r.

(Testimony of Lyle M. Tinker.)

Q. Where do you reside, Mr. Tinker?

A. 1117 S.W. 139th.

Q. Is that in Seattle?

A. It is between Burien and White Center. It is outside of the city limits.

Q. What is your occupation?

A. I am a supervisor for the Employment Security [237] Department of the State of Washington.

Q. How long have you been so employed?

A. Eight years.

Q. Has your home during all that time been in the vicinity that you have mentioned that it now is?

A. Well, within four or five miles, yes, within a radius of four or five miles. I have moved about five times but it has always been in that area.

Q. Are you a member of the Lions Club at White Center?

A. I am the president at the present time.

Q. How long have you known the defendant, John Stepich?

A. About five and a half years or six years or something of that nature.

Q. In what way did you know him, socially or in business?

A. Well, socially and business in the Lions Club, and very personally, too.

Q. Do you know what his reputation for good character and good citizenship is in the White Center area?

A. I would say it was excellent.

(Testimony of Lyle M. Tinker.)

Q. And you know that is his reputation amongst his fellows there? A. Yes. [238]

Mr. Spiller: I think that is all. You may examine.

Mr. Harris: No questions.

The Court: You may step down.

(Witness excused.)

The Court: Call the next witness.

Mr. Spiller: If the Court please, I think that will be all of the character witnesses for Mr. Stepich, and I am afraid I have made a mistake. I could have asked Mr. Tinker as to Mr. Hopkins, also, and I would like to recall him.

The Court: You may recall him.

Mr. Spiller: Mr. Tinker, would you resume the stand?

(Mr. Tinker resumes the stand.)

Further Direct Examination

By Mr. Spiller:

Q. You are the same Mr. Tinker who has just testified as to the character of Mr. Stepich?

A. Yes, sir.

Q. Mr. Tinker, are you acquainted with the defendant Mr. Hopkins? A. Yes, sir. [239]

Q. How long have you known him?

A. About five and a half or six years.

Q. Do you know what his occupation is at the present time?

A. He operates a fish market.

(Testimony of Lyle M. Tinker.)

Q. At White Center? A. Yes.

Q. Does he also belong to your Lions Club?

A. Yes.

Q. At White Center? A. Yes.

Q. Do you know what his reputation for good character and good citizenship is in his community?

A. It is very good.

Q. You know his reputation?

A. Yes, I do.

Q. What is your testimony as to what his reputation is? A. I think it is excellent.

Mr. Spiller: That is all, sir.

Cross-Examination

By Mr. Harris:

Q. Mr. Tinker, have you seen both Mr. Stepich and [240] Mr. Hopkins at the White Center Athletic Club? A. Yes, sir.

Mr. Harris: That is all.

(Witness excused.)

BRUCE E. LAKE

called as a witness by and on behalf of defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Spiller:

Q. Will you state your name for the record?

A. Bruce E. Lake.

(Testimony of Bruce E. Lake.)

Q. Where do you reside, Mr. Lake?

A. My home address is 4026 52nd S.W., Seattle.

Q. Is that near White Center?

A. Well, it is in the West Seattle area, probably four miles from White Center.

Q. Mr. Lake, what is your occupation?

A. I am a refrigeration service engineer.

Q. Are you acquainted in White Center?

A. Yes.

Q. Do you know the defendant Harold Hopkins?

A. Yes, I do. [241]

Q. Approximately how long have you known him?

A. Approximately six years.

Q. Do you know what his occupation is?

A. He operates a fish market at 9837 16th S.W., Seattle.

Q. Do you know what his reputation for good character and good citizenship is in the community in which he lives?

A. Very good.

Q. You do know what his reputation is?

A. I do.

Q. Will you state what it is?

A. It is very good.

The Court: Which one of the defendants is that?

Mr. Spiller: Mr. Hopkins.

You may examine.

Cross-Examination

By Mr. Harris:

Q. Have you ever been in the White Center Athletic Club?

A. Yes, sir.

(Testimony of Bruce E. Lake.)

Q. Have you ever seen Mr. Hopkins there?

A. Yes. [242]

Q. Did you drink liquor there?

A. I drank liquor there, yes.

Mr. Harris: That is all.

(Witness excused.)

Mr. Spiller: Mr. Berg.

PETER N. BERG

called as a witness by and on behalf of defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Spiller:

Q. Will you please state your name for the record?

A. Peter N. Berg. B-e-r-g.

Q. Where do you reside?

A. 8711 40th S.W., West Seattle.

Q. What is your occupation, Mr. Berg?

A. I am store manager right now.

Q. For what?

A. Crenshaw & Bloxom. The store is in White Center. It is commonly known as the Reliable Market.

Q. How long have you been so occupied?

A. Oh, I have been there for about a year.

Q. Were you acquainted in the White Center area [243] prior to the time you came to that store?

A. Yes, many years.

(Testimony of Peter N. Berg.)

Q. Do you know the defendant Harold Hopkins?

A. Very well.

Q. For how long have you known him?

A. I first met him in 1946.

Q. Do you know what his reputation is in the community in which he lives?

A. Very good, very good.

Q. Do you know what his reputation is?

A. Yes, I do know what it is.

Q. Now, will you state what it is?

A. Very good.

Mr. Spiller: Thank you. That is all.

Cross-Examination

By Mr. Harris:

Q. Mr. Berg, did you know that Mr. Hopkins was connected with the White Center Athletic Club?

A. No, I did not.

Mr. Harris: That is all.

The Court: You may step down.

(Witness excused.)

Mr. Spiller: I will call Mr. Felton. [244]

RUSSELL FELTON

called as a witness in his own behalf, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Spiller:

Q. Will you state your name for the record, please? A. Russell Felton.

(Testimony of Russell Felton.)

Q. And you are one of the defendants in this case? A. Yes.

Q. Where do you live?

A. 8652 17th Avenue S.W., Seattle.

Q. Is that in the White Center area?

A. Yes. It is about four blocks from White Center.

Q. Are you married? A. Yes.

Q. Do you have any children?

A. Two boys.

Q. How old are they?

A. Six and eleven.

Q. How long have you lived in White Center?

A. Since 1934.

Q. What is your occupation?

A. I am a bartender.

Q. How long have you been a bartender? [245]

A. Since 1950.

Q. May I ask you how did you learn that trade? Was it in a bartending school or by working in bars?

A. I applied for a job and I lied to the man. I told him I could tend bar. I had never tended bar before and he gave me the job.

Q. That was the first time that you tended bar?

A. Yes.

Q. How long ago was that? A. 1950.

Q. Are you acquainted with the defendant Peter Desimone? A. Yes.

Q. When did you become acquainted with him?

(Testimony of Russell Felton.)

A. Well, I have known of Pete Desimone since 1935-36. I knew him to see him in the street. I wasn't acquainted with him.

Q. Well, that is what I want to know. When did you become acquainted with him?

A. To be personal with him was in 1951.

Q. And how did you become acquainted with him?

A. He asked me to tend bar for him.

Q. When in 1951 was that?

A. It was some time in June.

Q. Independent of anything that he had said to you, [246] did you know that he had a bar in White Center at the time of that conversation?

A. Yes.

Q. What happened as a result of his asking you to go to work for him as a bartender?

A. I started to work for him within a day or two.

Q. Upon what terms did you work for him? What were the terms of your employment as to salary, as to when you would work, as to whether you would work?

A. Well, I explained to him I had to go clear with the union. So the following day I went to the union to clear with them, and they explained to me that they couldn't okay me to go to work for them for the simple reason that at that time the bottle clubs were in debate in Superior Court, as to whether they were illegal or legal, but they told me to go ahead on my own hook.

(Testimony of Russell Felton.)

Q. That is without union membership, you mean?

A. Right.

The Court: At this point we will take about a ten minute recess.

(Recess.)

The Court: All are present as before the recess. You may proceed.

Q. (By Mr. Spiller): Mr. Felton, I believe I had just asked you whether [247] at the time Mr. Desimone asked you to tend bar, whether there was any arrangement with respect to your reimbursement or your time of work, et cetera.

A. We made the agreement that I would receive union scale if I put in an eight-hour shift.

Q. I don't recall now whether you stated at what time of the year that was.

A. I believe it was in June some time. I can't recall the exact date.

Q. Of 1951? A. Right.

Q. Now, did you then go to work for Mr. Desimone?

A. I think it was two or three days after he had asked me to tend bar.

Q. Did you then go to work for him?

A. Yes.

Q. And where did you work?

A. Behind the bar in the White Center Athletic Club.

Q. Were you at that time engaged in a regular shift employment with Mr. Desimone at that place?

(Testimony of Russell Felton.)

A. No. You couldn't call it regular, no.

Q. How were your hours determined—or your shifts?

A. Well, it depended on the dinner party to be had. Saturday night—the dinner party—for instance, I would come to work at nine o'clock at night. Maybe if it [248] was Tuesday night, I would come to work at six o'clock at night. I could never determine my hours from one day to the next.

Q. Who would tell you what your hours would be, your hours of employment as a bartender at the White Center Athletic Club?

A. In most cases it was Pete Desimone.

Q. And how many shifts in a week would you work?

A. Oh, it would go four or five nights a week.

Q. Did you have any other employment during that period of time?

A. Not in 1951 after June.

Q. Was there a regular time for paying you for your services as a bartender? Was there a regular pay day?

A. Yes.

Q. On what day was that?

A. Well, that would usually come up Monday afternoon because I knew Pete would be there and he would pay me.

Q. For how long a period of time then did you work on that basis at the White Center Athletic Club?

A. It was about two weeks before Christmas in 1951 that I quit working for him.

(Testimony of Russell Felton.)

Q. Was there any special reason for quitting working?

A. Well, the Liquor Board raided the place and that had a little bit of influence on it I think. [249]

Q. Did you quit then or were you fired?

A. I quit.

Q. Did you again after that go back to work at the White Center Athletic Club?

A. Well, as part time, off and on for maybe six or seven, maybe ten, shifts, short hour shifts.

Q. During and in what year was that?

A. Well, it started some time in March of '52 and ended in the early part of May of '52, those few shifts that I worked.

Q. You say there would be about ten?

A. Well, I wouldn't say exactly. It could be anywhere from five to ten shifts.

The Court: In what month did it end?

The Witness: Ending definitely in May.

Q. (By Mr. Spiller): When you say a shift, what part of a day or of a night or of a period of time would a shift usually involve?

A. Anywheres from four to eight hours.

Q. And usually in the evening, some time between the dinner hour and midnight? A. Yes.

Q. Sometimes past midnight?

A. Yes, that is right. [250]

Q. Were you paid by the day or by the hour when you worked?

A. If I worked short hours I was paid by the

(Testimony of Russell Felton.)

hour, and if I worked an eight-hour shift, I was paid by the shift.

Q. How did you happen to terminate your employment in May of 1952? A. I was fired.

Q. By whom? A. Pete Desimone.

Q. Now, during the period that you worked there in 1951, did you know the defendant John Stepich?

A. I got to know him during that period.

Q. Did Mr. Stepich ever give you any direction as to your duties as a bartender? A. No.

Q. I am speaking now of the period in 1951?

A. No, he never did.

Q. Did you know at that time whether or not Mr. Stepich had any interest in or any connection with the White Center Athletic Club? A. No.

Q. Or whether he had any interest in or connection with the business that was conducted by the White Center Athletic Club? [251]

A. No.

Q. I am going to ask you, with reference to the period that you worked in 1952, were you ever given any directions in the conduct of your work by Mr. Stepich? A. No.

Q. To your knowledge, during the time that you were employed in 1952 there, did you know whether or not Mr. Stepich had any connection with or interest in either the White Center Athletic Club or the business that went on there? A. No.

Q. By whom were you paid your salary or your pay check? A. Pete Desimone.

(Testimony of Russell Felton.)

Q. In all cases? A. Yes, sir.

Q. Did you know by whom purchases of supplies, food stuffs, mixes, things of that sort were made for the club?

A. I was never there in that time of day when they purchased anything.

Q. Did you ever have any remuneration other than the salary or pay for your hours of work or your shifts of work at the White Center Athletic Club? A. No. [252]

Q. I will ask you that same question—either in money or in merchandise or in any kind of property?

A. No. I received my wages and that was it.

Q. In the time that you worked, either in 1951 or in 1952, did you ever see Mr. Stepich doing any work of any sort in or about the White Center Athletic Club that could be said to be connected with the business that went on there? A. No.

Q. Were there slot machines in the club?

A. In 1951 I remember there was. I can't recall if there were in '52 or not in the few shifts I worked there; I can't say.

Q. Was there a change-maker on duty at the club in connection with the slot machine business?

A. Yes, they had one in the office. The girl ran it.

Q. And who was the girl? A. Charlotte.

Q. Charlotte who? A. Fulford.

The Court: How do you spell the last name?

Q. Can you spell her last name?

(Testimony of Russell Felton.)

A. I am not sure.

Mr. Spiller: I think for the record it has been spelled F-u-l-f-o-r-d. Is that correct, Mr. Harris?

Mr. Harris: That is my recollection.

Q. (By Mr. Spiller): Did you ever at any time see Mr. Stepich in the office where change was made?

A. No.

Q. In all the time that you worked there?

A. That is right. I never seen him in the office.

Q. Now, during the time that you worked there, you became acquainted with the defendant Harold Hopkins?

A. Well, I knew him to see him before that but I became acquainted with him in the time I worked there.

Q. Did Mr. Hopkins ever give you any directions as to how to conduct your business there at the club?

A. No.

Q. Either in '51 or in '52?

A. No.

Q. Did you know of your own knowledge whether or not either Mr. Hopkins or Mr. Stepich had any interest in the White Center Athletic Club or in the business that was engaged in there?

A. No.

The Court: The way the question is put and the answer, I am not certain whether he is saying he is without knowledge or making a statement regarding a fact. [254]

Q. (By Mr. Spiller): Mr. Felton, will you clarify that answer by indicating—

A. The only knowledge I had that Mr. Hopkins

(Testimony of Russell Felton.)

or Mr. Stepich—the only time I had anything to do with them in the bar, they were customers. That is my only contact with them in the White Center Athletic Club.

Q. Did you in any way treat them any differently from any other customers?

A. Just like anybody else that would sit down at the bar.

Q. Did you look on them as co-owners or cooperators of the club or the business? A. No, sir.

Q. When you first went to work, as you have testified, for Mr. Desimone at the club, did you have any information as to whether or not there was a Federal retail liquor dealer's stamp for the operation of the business at the club? A. No.

Q. Did you ever ask anyone? A. No.

Q. Did any one ever tell you that there was or was not at the time you went to work?

A. No. [255]

Q. By the way, at that time you had been tending bar for some period of time. How long was it?

A. Before I went to work for Mr. Desimone?

Q. Yes. A. About a year and a half.

Q. Was that ever in a place where whiskey or spiritous liquor was served, as distinguished from a place where beer and wine was served?

A. No. It was a beer tavern where I worked before I went to work for Mr. Desimone.

Q. Had you ever sold whiskey at a bar prior to working for Mr. Desimone? A. No.

Q. I will ask you whether or not you had any

(Testimony of Russell Felton.)

knowledge of your own at the time you went to work for Mr. Desimone as to any Federal law requiring a place of that sort to have a Federal retail liquor dealer's stamp? A. No.

Q. Did you have such knowledge or did you not have such knowledge?

Mr. Harris: When?

Mr. Spiller: At the time that he went to work for Mr. Desimone.

A. No.

Mr. Spiller: I am not sure that we have an [256] intelligible answer in the record and it may be because of my question.

Q. (By Mr. Spiller): Did you know that there was a Federal law requiring a retail liquor dealer's stamp for a whiskey sale or operation?

A. No.

Q. You did not know that there was such a requirement? A. Not Federal, no.

Q. I will ask you when you first learned, and from what source, that there might have been such a law or a legal requirement?

A. Well, in October when the Liquor Board raided the club, Mr. Turner mentioned to me about a stamp. At the time he was explaining to me about this stamp I still didn't understand what kind of a stamp he meant. I knew it was something that should have been there. I assumed it was when he started explaining to me about the stamp, but in reality I didn't realize what the stamp was or what it was for.

(Testimony of Russell Felton.)

Q. When then did you first find out?

A. When I was charged with this indictment.

Q. Had any one in the meantime, any State officer, talked to you about a Federal liquor stamp other than in [257] October of 1951, do you recall?

A. I can't recall if they did or not. That is a State officer, you are asking about?

Q. Yes.

A. No. I can't recall if they did or not.

Q. Would it refresh your recollection any if I asked if there was a possibility that Mr. Turner could have talked to you about such a stamp during March, April or May of 1952?

A. Well, I talked to Mr. Turner in one of those months. I really don't recall what month, and whether we discussed about this tax stamp again that time or not I don't know. I can't remember if we did or not, but I remember in October is when he mentioned it to me, is when I remember he brought it up.

Q. Mr. Felton, have you ever been an officer, a director or a stockholder in the White Center Athletic Club, Inc.? A. No.

Q. Were you ever approached by any one with a request to become an officer, a director or a stockholder? A. No.

Q. Did you have any agreement, directly or indirectly, with Mr. Desimone other than your agreement to work as a bartender as you have described? [258] A. No.

Q. Did you ever have a conversation with Mr.

(Testimony of Russell Felton.)

Desimone looking to any joint action or any concerted action between you and Mr. Desimone in connection with the operation of the White Center Athletic Club or the business that there went on?

A. I don't quite understand the way you put that question.

The Court: He means any action in association of any kind with Mr. Desimone other than the employment association you have mentioned.

A. No, no.

Q. Did you have any such association or an agreement for such association with Mr. Hopkins?

A. No.

Q. Touching the operation of the White Center Athletic Club or the business that was there carried on?

A. No.

Q. Did you have any agreement for an association of any sort with Mr. Stepich touching the operation of the White Center Athletic Club or the business that was there carried on?

A. No.

Q. Did you have any agreement with Mr. DePierris respecting a joint association or a joint operation of [259] the White Center Athletic Club or the business that was there carried on?

A. There were two bars, a service bar here and one here, and if we both happened to be working that night, I would ask him which bar he wanted to work. That was it.

The Court: To whom do you refer?

The Witness: Bert DePierris, the other bartender.

(Testimony of Russell Felton.)

Q. (By Mr. Spiller): Is Bert DePierris one of the defendants here? A. Yes, sir.

Q. And what was his relationship to the White Center Athletic Club, if you know?

A. From what I understood?

Q. What did he do?

A. He was a bartender, the same as I.

Q. And your testimony is that your only association with him was in respect to your and his duties at the club?

A. If we happened to be working together at the same time, yes.

Q. Was that ever in any way as a result of any association or combination between you and other people? A. No.

Q. Or was that merely in connection with your ordinary duties as a bartender? [260]

A. I didn't quite understand what you meant there. I am sorry.

Q. I want to know, Mr. Felton, whether you ever discussed with Mr. DePierris any joint action by you and him except strictly with regard to tending bar, what you and he were to do in the ordinary course of your job as a bartender and his job as a bartender?

A. No, I never discussed anything with him.

Q. Did you ever, with respect to any other person whatsoever, have any agreement for an association in connection with the operation of the White Center Athletic Club or of the business that was there carried on? A. No.

(Testimony of Russell Felton.)

Q. This Charlotte Fulford, for example?

A. No.

Q. Or with any other person whatsoever?

A. No.

Q. Mr. Felton, you were charged with possession of liquor in violation of the Steele Act in King County Justice Court as a result of one or two of the raids that have been mentioned here?

A. Yes.

Q. And did you, with respect to one such charge, plead guilty?

A. Yes, in Superior Court. [261]

Q. And were you convicted with respect to the other charge? A. Yes.

Mr. Spiller: I think that is all, if the Court please.

The Court: Mr. Harris, you may inquire.

Cross-Examination

By Mr. Harris:

Q. Mr. Felton, your duties as bartender consisted of doing what while you were there at the White Center Athletic Club during the years 1951 and 1952?

A. Go behind the bar, and when they ordered drinks, I served them.

Q. Who would order drinks?

A. Customers.

Q. And you would serve them what?

A. Well, I served them a lot of different drinks.

Q. Did you ever serve them liquor?

(Testimony of Russell Felton.)

A. Yes.

Q. Where did you get the liquor?

A. It was behind the bar.

Q. And how did that liquor get behind the bar?

A. I don't know. It was always there when I came to [262] work, what I was supposed to serve.

Q. And who told you what liquor to serve?

A. Whoever was in the office. It was usually Charlotte Fulford. If they had a dinner party for the Milk Fund, those bottles to serve the Milk Fund people were all labeled and marked. Those were the ones that I served them.

Q. Who else gave you directions as to what bottles to use? A. Pete did.

Q. Do you remember serving liquor to Mr. West?

A. Yes.

Q. And what bottle did you use there?

A. I don't recall.

Q. Did you use Mr. West's bottle?

A. I don't recall.

Q. Did he bring a bottle in with him?

A. Well, I don't remember when he came in.

Q. You never served anybody any liquor unless they brought their own bottle, is that your testimony? A. No.

Q. What is your testimony then as to that?

A. I have served drinks out there.

Q. And using any bottle whatsoever?

A. Well, it depended. If they were with [263] these dinner parties——

Q. Well, let's eliminate the dinner parties. You

(Testimony of Russell Felton.)

didn't have dinner parties every night?

A. Most of the nights I worked we did.

Q. From your June employment in 1951 to two weeks before Christmas, 1951, you had dinner parties practically every night, is that your testimony?

A. No. I didn't work every night.

Q. Well, how many nights did you work?

A. Well, maybe one week it would be three nights; maybe the next week, six nights; maybe the next week, two nights. It was never on a steady pattern. It was whenever they had arrangements for a dinner party.

Q. Oh, you only worked then on dinner party nights?

A. Once or twice I worked if the regular bartender was going to have a night off. I filled in for him.

Q. When Mr. West appeared there, was there a dinner party in progress that night?

A. I can't remember if there was or not.

Q. Do you recall when Mr. West appeared there with Mr. Whittall?

A. Yes.

Q. Was there a dinner party there in progress that night?

A. Yes. [264]

Q. And what was your purpose in asking him if he was a liquor inspector?

A. I didn't ask him. I told him.

Q. What?

A. He was a liquor inspector.

Q. Why did you tell him that?

A. He had been down to court a week before

(Testimony of Russell Felton.)

and had told the judge I had sold whiskey and the man found me guilty, so I seen him sitting at the bar again and I asked him to leave.

Q. Were those one of your duties? A. No.

Q. Then you took that upon yourself, did you?

A. As a temperamental right at that moment, yes.

Q. And as concerns Mr. Whittall?

A. No. I didn't know he was with Mr. West until he told me.

Q. Then what did you do?

A. I asked him to leave.

Q. Did he testify in court, too, against you?

A. Yes.

Q. The previous week?

A. Oh, no, today. Excuse me.

Q. Well, let's go back to whether he testified. I believe you said the previous week, didn't you?

A. No. Mr. West did, but not Mr. Whittall.

Q. Well, my question is did Mr. Whittall testify? A. No.

Q. Then why did you ask him to leave?

Mr. Spiller: He has already answered that. I object to that if the Court please.

The Court: The objection is overruled. I understand there is some lack of clarity there.

Mr. Spiller: I withdraw the objection.

Q. (By Mr. Harris): Why did you ask Mr. Whittall to leave?

A. I figured he was a friend of this Mr. West.

Q. Was that part of your duties? A. No.

(Testimony of Russell Felton.)

Q. You took that upon yourself, did you, at that time? A. At that moment, yes.

Q. Do you remember when Mr. Daggett was there? A. No, I don't recall serving him.

Q. You don't deny serving him, though, do you?

A. No, but I don't recall it.

Q. You don't know what liquor you used then to serve him, if you did serve him? A. No.

Q. And as far as you know, he didn't bring any [266] bottle into the place, did he?

A. I don't remember him being there.

Q. How much money would you charge for the drinks that you served? A. Fifty cents.

Q. I wondered if it included Scotch or some selected whiskey other than was usually being used at the bar, would there be an increase in price?

A. No. We just charged fifty cents.

Q. Did you hear Mrs. Schwier say she paid sixty-five cents for cocktails, daiquiris—I think she used that word? A. I never served her a drink.

Mr. Toulouse: Just a minute. I object to that. I don't think it was the testimony of the witness Schwier.

The Court: Now, first one counsel objects and then the other counsel objects. One counsel has interrogated this witness on direct. I think Mr. Spiller ought to attend to the questions and answers that are concerned with this witness' testimony.

Mr. Spiller: I will object to this question then, if the Court please, upon the ground that the ques-

(Testimony of Russell Felton.)

tion calls for a conclusion that isn't to be assumed. There is no testimony by Mrs. Schwier that she ever bought a daiquiri from Mr. Felton. [267]

The Court: The objection is overruled.

Q. Do you recall her testimony? That was the question. A. Yes.

Q. Did you while you worked as a bartender ever sell any daiquiris? A. Yes.

Q. What was your price that you charged?

A. Fifty cents.

Q. Not sixty-five cents? A. No, sir.

Q. Now, you were working there, were you not, when this Dr. Edward Lincoln Smith Orthopedic Guild was in progress, their party?

A. I don't recall. What was that date?

Q. On February 29, 1952, and through the early morning of March 1, 1952.

A. I can't recall if I was or not.

Q. Do you recall if you yourself, along with Mr. Pierris, were attending bar that evening.

A. It is possible, but I don't recall the date or the dinner party.

Q. And do you recall Mr. Turner testifying that he asked you where did all the liquor come from labeled [268] for the Guild, and you told him they brought it in, do you recall that?

A. I remember talking to Mr. Turner but I don't know if that is the exact date or if that is the party.

Q. You don't remember any conversation of that kind, is that correct?

(Testimony of Russell Felton.)

A. Well, I remember talking to Mr. Turner, yes, but I——

Q. What did you say to Mr. Turner? What did he say to you?

A. By golly, I can't remember.

The Court: Try to avoid such words as "by golly."

Q. Does this help refresh your recollection any—that at that time you told Mr. Turner when he asked you did you see them bring in the liquor, that your answer was "No, but I was told they did." Does that help any? A. No, sir. I can't remember.

Q. You still don't recall that conversation or that instance, is that correct? A. That is right.

Q. Do you recall the conversation that you had with Mr. Turner on April 6, 1952?

A. I can vaguely remember the conversation, not word for word. [269]

Q. Do you recall that on that day you pointed out to him twenty-two bottles of liquor and said that was the house stock? A. Yes, sir.

Q. What did you mean by "house stock"?

A. Those were the ones that I was supposed to pour out for that dinner party that was in progress.

Q. And what dinner party was in progress that evening? A. I don't know.

Q. So your definition of "house stock" is the liquor that you are supposed to pour out for a particular party, is that correct?

A. Yes, on certain nights.

Q. And in some instances does that house stock

(Testimony of Russell Felton.)

bear consecutive numbers on the stamp over the top of the lid of the bottle?

A. I don't know. I have never examined them.

Q. And you never scratched those numbers off so that they couldn't be ascertained? A. No.

Q. Do you recall the conversation you had with Mr. Turner on April 6, 1952, relative to what you said concerning Mr. Desimone and Mr. DePierris?

A. Well, I don't remember exactly word for word, [270] but I remember I was a little put out about it.

Q. What did you say?

A. I said: "They were here a little while ago, but they aren't now."

Q. That was both of those individuals?

A. Yes.

Q. Who advised you, if any one, to tell Mr. Turner that you were not selling liquor; you were merely selling service?

A. Well, part of the time I was selling service, and he asked me what I was selling, so I told him I was selling service.

Q. What were you doing the other part of the time? A. Selling whiskey.

Q. On October 26th you testified that that was the first time Mr. Turner mentioned anything to you regarding a Federal retail liquor dealer's stamp?

A. He mentioned the stamp to me, yes. That was the first time.

(Testimony of Russell Felton.)

Q. Then you say that was mentioned to you again but you don't recall when?

A. No, sir. I don't recall when.

Q. March 1st, 1952, when the Guild was there, does that assist you in any way?

A. No. [271]

Q. When he asked you again, didn't you reply then that you weren't selling liquor, that you were merely selling service? A. I don't recall.

Q. Do you deny that you did that?

A. I don't deny it, but I don't recall it.

Q. Why when you were asked then, did you ever state that?

A. Well, up until that time, that is what I thought I was selling.

Q. Then why did you, when asked for a stamp, make such a statement?

A. That is what I believed I was selling.

Q. Do you deny that Charlotte Fulford told you that the Dr. Edward Lincoln Smith Guild had brought in certain bottles and you were to use them?

A. No. That is what she told me.

Q. You did receive some instructions from her then as to what to do, is that correct?

A. As to what party to serve, what tables.

Q. And you received some instructions you say from Mr. Desimone, is that correct?

A. Well, I don't know about that particular evening, but I received instructions from him, yes.

Q. Now, you state that you have never seen Mr. [272] Stepich do any work there at the White

(Testimony of Russell Felton.)

Center Athletic Club? A. No.

Q. You heard Mr. Daggett testify here today, did you not? A. Yes.

Q. Do you deny that he asked you where he could get some dimes to play the one-armed bandits, and you told him "over there"?

A. I don't recall him ever being in the club.

Q. Do you deny it? A. Yes.

Q. How often have you seen Mr. Hopkins and Mr. Stepich in the White Center Athletic Club as customers?

A. Well, from the beginning of when I first went to work at the White Center Athletic Club. Monday nights the Lions Club would hold their dinners there, and all the members of the Lions Club would come there, and that is when I got to know them. I got used to meeting all these Lions Club members on Monday nights. They were two of the Lions Club members.

Q. Now, can you answer my question then? How often have you seen them there at the bar as customers?

A. Every Monday night that I worked there on their dinner on Monday night. Maybe once in a great while I [273] would see them in the middle of the week there.

Q. How often would that be? My question is this, Mr. Felton: How often have you seen Mr. Hopkins—take him alone—as a customer at your bar while you have been working there?

(Testimony of Russell Felton.)

A. Well, on the average, it would be every Monday night.

Q. Would that be at least fifty times?

A. That would be once a week for the period that the Lions Club held their dinners there, and when they discontinued holding their dinners there, I don't remember the date.

Q. Mr. Felton, I believe you testified that you didn't work every night of the week, isn't that correct?

A. No. If they had their dinner dates there, they used to have their meetings and dinners on Monday nights, and usually I worked that Monday night dinner of theirs, and I would see him every Monday night.

Q. Can you give us an estimate then, your best estimate, of how much you have seen him at the club?

A. I couldn't give a truthful estimate because I don't remember when they stopped having their dinners there.

Q. Do you ever recall serving them liquor?

A. On a few different occasions, yes. [274]

Q. And do you recall them paying for it?

A. Yes.

Q. And do you recall what bottle you used when you served them? A. No.

Q. And they were buying service, were they not?

A. They were buying whiskey.

The Court: Who was that?

The Witness: Stepich and Hopkins.

(Testimony of Russell Felton.)

Q. (By Mr. Harris): And do you remember, also, on April 6, 1952, when Mr. Turner and Mr. Burke arrived, along with Mr. Booth, that Charlotte Fulford was present? A. Yes.

Q. And that she attempted to calm you down or keep you quiet? A. Yes.

Q. Is that correct? A. Yes.

Q. Why were you disturbed on that particular evening?

Mr. Toulouse: I object to that as immaterial.

The Court: Overruled.

A. Mr. Turner informed me I was under arrest, and I was getting ready to go to jail with him, and I asked Charlotte if she had called the bondsman to meet me down [275] there, and she said she couldn't get any one over the phone, so I went back to take the money out of the cash register so I could bail myself out when I got to jail, and it didn't agree with her I guess. Mr. Turner stood right there and I counted out the money, cash, that I was taking so they wouldn't think I was stealing their money, and I told them I would return it and away we went.

Q. How much money did you take?

A. Two hundred and fifty dollars.

Q. And didn't you also make the statement that you felt as though you were being made the goat by Desimone and DePierris at that time?

A. In a sense, yes, and in a sense, no.

The Court: I believe the question was did you make such a statement. Read the question.

(Testimony of Russell Felton.)

(Last question read by the reporter.)

The Witness: May I explain my answer, please?

The Court: Yes, you may, but the question is whether or not you made such a statement.

A. Yes, I made the statement.

The Court: Now you can explain.

A. Well, I had come back to work just those few short shifts, and here I was. I hadn't been in the club for I don't know how many days and I come in to work this [276] dinner party, and all of a sudden Pete is gone and Bert had left a little earlier, and the Liquor Board walked in and arrested me. Well, naturally, I was excited about it, and I said: "This is it. That is the last time." That is what I meant by that statement.

The Court: Since that time what kind of work generally have you done, Mr. Felton?

The Witness: I have been working in a tavern for—it will be two years next month, in White Center.

The Court: Have you been in any trouble with the operations in that tavern so far as compliance with the laws are concerned?

A. No, sir, not one bit.

The Court: You may proceed.

Mr. Harris: That is all.

Mr. Spiller: Might I ask two more questions if the Court please?

The Court: You may do that.

(Testimony of Russell Felton.)

Redirect Examination

By Mr. Spiller:

Q. Do you have a recollection of about how much money you earned for your services as a bartender in 1951, that is at the White Center Athletic Club? [277]

Mr. Harris: I don't think that was gone into on cross-examination, your Honor.

The Court: Do you wish to open——

Mr. Spiller: Length of time and days of service.

The Court: For the sake of expediting the matter, the objection is overruled. You may answer.

Q. (By Mr. Spiller): Do you have a recollection of about how much money you earned in '51 from the White Center Athletic Club or Pete Desimone?

A. It was around one hundred dollars.

Q. In '51 or '52?

A. Oh, excuse me. In '51, I would say it would be around a thousand dollars, maybe a little less, maybe a little more.

Q. And in 1952 it would be around what?

A. Around a hundred dollars.

Q. Now, while you were working there did you have access to the office where the change was kept?

A. No.

Q. Were you permitted to go in there?

A. No.

Q. At any time for any purpose?

A. I had been in the office maybe once in the

(Testimony of Russell Felton.)

time I had worked there. I had walked back to ask Pete about [278] something—I forget what it was—but I remember I had walked back, and that was it.

Mr. Spiller: I think that is all.

ReCross-Examination

By Mr. Harris:

Q. How can you recall the amount of money that you earned in 1951 there?

A. I was looking at my income tax returns the other day.

Q. And that is your only recollection of it?

A. Yes.

Q. And your testimony is that you reported all that you earned? A. Absolutely.

Q. And included your tips and things like that?

A. Well, I would try to avoid accepting tips.

Q. When you did accept them, you didn't report those, did you? A. Well, yes.

Mr. Spiller: I object to that if the Court please. I don't think he has any right to go into the man's reporting of various income.

The Court: The objection is overruled. [279]

Q. (By Mr. Harris): Will you explain that answer?

The Court: You are talking about tips now?

Mr. Harris: Let me repeat the question.

Q. Did you report the tips that you received there? A. I did—to Bert.

Q. To whom?

(Testimony of Russell Felton.)

A. To Bert DePierris. If we did have a couple of tips, if he made a dollar, he would split it with me at the end of a shift.

Q. And would you report that on your W-2 form?

A. I would usually put them in the slot machine. No.

Q. Well, then, your answer is——?

A. On my income tax, no, I didn't.

Mr. Harris: All right. That is all.

The Court: Anything further?

Mr. Spiller: No further questions of this witness.

The Court: You may be excused.

(Witness excused.)

The Court: I think we ought to stop here until tomorrow. The Court is now adjourned until tomorrow morning at ten o'clock.

(At 4:30 o'clock p.m., Thursday, April 22, 1954, proceedings recessed until 10:00 o'clock a.m., Friday, April 23, 1954.) [280]

April 23, 1954, 10:00 A.M.

The Court: May it be stipulated that each and all of the defendants on trial in the case which was continued until this date for further trial proceedings, namely Cause No. 48570, and their counsel, as well as Government counsel, are present?

Mr. Harris: It is so stipulated.

Mr. Toulouse: Yes, your Honor.

Mr. Spiller: Yes, your Honor.

The Court: You may proceed.

Mr. Toulouse: Mr. DePierris.

BERTRAND DePIERRIS

called as a witness by and on behalf of himself as defendant, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Toulouse:

Q. Will you state your complete name?

A. Bertrand DePierris. [281]

The Court: How do you spell it?

The Witness: Bertrand B-e-r-t-r-a-n-d Depierris
—D-e-capital P-i-e-r-r-i-s.

Q. (By Mr. Toulouse): How old are you, Mr. DePierris? A. 33.

Q. Where do you live?

A. 6534 West Hanford.

Q. Are you married? A. Yes, sir.

Q. Where is your wife employed?

A. National Bank of Commerce.

Q. And where are you employed?

A. I am unemployed at the present time.

Q. What have you been doing for a living?

A. Oh, I have been working out of the casual labor hall of the Teamsters Union.

Q. In that connection, what types of employment have you had?

A. Unloading trucks and delivery work.

(Testimony of Bertrand DePierris.)

Q. Longshoring? A. Yes.

Q. Now, prior to January of 1952 where did you live? A. Salem, Oregon.

Q. And how long had you lived there? [282]

A. Four months.

Q. And how long had you lived in Oregon prior to July of 1952? A. Four years.

Q. And what was your business there?

A. I was in the real estate business.

Q. When did you first come to Seattle?

A. About December 1, 1951.

Q. Were you in Seattle during the year January until November of 1951? A. No, sir.

Q. After you came to Seattle, what did you do for a living?

A. Worked for the White Center Athletic Club.

The Court: Mr. DePierris, when did your residence in Seattle begin?

The Witness: December, 1951.

The Court: You may inquire.

Q. (By Mr. Toulouse): When did you first go to work for the White Center Athletic Club?

A. About December 1, 1951.

Q. And who employed you?

A. Pete Desimone.

Q. And where did that employment take [283] place? A. 9616 17th S.W.

Q. And what was your job to be?

A. Tend bar.

Q. And what were your wages to be?

A. Union wages.

(Testimony of Bertrand DePierris.)

Q. Will you state whether or not that was full time employment or part-time employment?

A. Part-time employment.

Q. When you say "part-time," will you try to characterize it to the Court as to how often you were to work at the outset?

A. Well, when I worked it was generally for an eight-hour shift, but it would vary from maybe three days a week one week and the next week it might be more than that, four or five days.

Q. And how long were you so employed by the White Center Athletic Club?

A. About four months.

Q. And during that period of time how much did you earn?

A. A little over eight hundred dollars.

Q. What would be the wage per shift on an eight-hour shift?

A. At that time it was fifteen dollars.

Q. Now, prior to your coming to Seattle in December [284] of 1951, did you know Mr. Pete Desimone?

A. Yes.

Q. And what were the circumstances under which you met him?

A. I met him before the war. He had a tavern in White Center, and I worked for the Acme Beer distributors here. I met him in conjunction with selling beer.

Q. How well did you know him?

A. Casually.

Q. In other words, you were a truck driver for

(Testimony of Bertrand DePierris.)

a beer distributing firm? A. Yes, sir.

Q. That distributed beer to a tavern owned by Mr. Desimone? A. Yes.

The Court: What is the origin of the supply that you were concerned with?

The Witness: Well, I worked for a company called the Acme Beer Distributors.

The Court: Where?

The Witness: 939 First Avenue South.

The Court: Is it true that you had lived in Seattle prior to 1951?

The Witness: Yes, sir.

The Court: You may proceed. [285]

Q. (By Mr. Toulouse): When was that that you lived in Seattle? A. I was born here.

Q. When was it that you met Mr. Desimone?

A. About 1946 or 1945.

Q. Incidentally, did you go to war?

A. Yes.

Q. How long were you in the service?

A. Two years.

Q. And where was that service?

A. I was in Japan.

Q. What years did that encompass?

A. '46 to '48.

Q. What was your rank?

A. First sergeant.

Q. After coming back from war, did you live in Seattle? A. No, sir.

Q. Where did you live?

A. In Portland, Oregon.

(Testimony of Bertrand DePierris.)

Q. Did you know Mr. Stepich? A. No, sir.

Q. Let's fix a date. Did you know Mr. Stepich prior to going to work for Mr. Desimone?

A. No, sir. [286]

Q. Did you know Mr. Hopkins?

A. No, sir.

Q. Did you know Mr. Felton? A. No, sir.

Q. Now, when did you first meet Mr. Stepich?

A. About January, 1952.

Q. And in what connection did you meet him?

A. As a customer.

Q. As a customer where?

A. At the White Center Athletic Club.

Q. Did you ever see Mr. Stepich in any other capacity than as a customer at the White Center Athletic Club? A. No, sir.

Q. Did you ever see Mr. Stepich operating the change room for the coin-operated machines at the White Center Athletic Club? A. No, sir.

Q. At any time? A. No, sir.

Q. Now, on the occasions that you saw Mr. Stepich, was that the occasions referred to by Mr. Felton, that is when the Lions Club——

Mr. Harris: I think that is rather leading.

The Court: It is.

Mr. Toulouse: I think it is. [287]

The Court: You may change the question.

Q. (By Mr. Toulouse): Can you recall the particular occasions upon which Mr. Stepich would be at the White Center Athletic Club? Just answer that yes or no. A. Yes, sir.

(Testimony of Bertrand DePierris.)

Q. Now, will you state to the Court what those occasions were?

A. In connection with myself it was very spasmodically. I may have seen him once a month.

Q. Now, I will ask you did the Lions Club at White Center hold their dinners there?

A. Yes, sir.

Q. Was Mr. Stepich a Lions Club member?

A. By hearsay only.

Q. You don't know whether or not he was?

A. No.

Q. Now, what was your rank in the Army?

A. First sergeant.

Q. During the period after you went to work for Mr. Desimone what work did you do at the White Center Athletic Club?

A. Just the usual duties of a bar tender.

Q. Did you ever make out any social security forms for Mr. Desimone? [288]

A. No.

Q. Did you ever pay any person around the club?

A. No.

Q. Did you ever do any bookkeeping for the club?

A. No.

Q. Did you ever order any food, provender or merchandise for the club?

A. No.

Q. Who paid you?

A. I was paid by two different people, Pete Desimone sometimes and a woman named Charlotte Fulford.

The Court: Did you understand she was Miss or Mrs. Fulford?

(Testimony of Bertrand DePierris.)

The Witness: She is Mrs. Fulford.

The Court: You may inquire.

Q. Did you own any of the property in that club during the period December '51 to May of '52?

A. No.

Q. Have you ever been an officer, a director or a stockholder of the White Center Athletic Club, Inc., a corporation? A. No.

Q. Have you ever been present at any meeting or purported meeting of any officers, directors or stockholders of the White Center Athletic Club, Inc., a corporation? [289] A. No.

Q. Did you at any time ever have an agreement with Mr. Pete Desimone not to pay the retail liquor dealer's stamp provided by Federal statute?

A. No.

Mr. Harris: That is leading, too, your Honor.

The Court: The objection is overruled.

A. No, I did not.

Q. Did you ever have an agreement with Mr. Hopkins wherein you and Mr. Hopkins agreed not to pay the retail liquor dealer's stamp tax under the statute at the White Center Athletic Club?

A. No.

Q. Did you ever have an agreement with Mr. Felton with respect to the same subject matter as I have stated to you in my preceding question?

A. No.

Q. Did you ever have such an agreement with Mr. Stepich as I stated in my preceding question?

A. No.

(Testimony of Bertrand DePierris.)

Q. Did you ever have an agreement with Mrs. Charlotte Fulford? A. No.

Q. Did you ever have an agreement with any one to the effect that you would agree with them not to pay the [290] retail liquor dealer's stamp tax on the sale of liquor at the White Center Athletic Club? A. No.

Q. Did you ever hear of the existence of such an agreement between Mr. Felton, Mr. Stepich, Mr. Hopkins or Mr. Desimone or Charlotte Fulford?

A. No.

Q. Did you ever hear that there was an agreement between any persons with respect to that subject matter? A. No.

Q. Did you ever go into Pete Desimone's office at the White Center Athletic Club? A. Once.

Q. And what was that occasion?

A. One night he was absent, and there was a coat that a customer had left on the premises, and Mrs. Fulford was on the telephone at the time. It was a week day. And she motioned me to go into the office to get the coat.

Q. Did you have any directions with respect to whether or not you could go into the office or could not go into the office?

A. I wasn't allowed to enter the office.

Q. Did you have any directions as to whether or not you could or could not tend the cashier's cage on the coin-operated machines? [291]

A. I was not allowed there.

(Testimony of Bertrand DePierris.)

Q. Did you have access to the books and records of the White Center Athletic Club?

A. No.

Q. Have you ever seen any books and records of the White Center Athletic Club? A. No.

Q. You were, were you not, convicted under the Steele Act for bar tending at the White Center Athletic Club? A. Yes.

Q. When was the last time that you worked at the White Center Athletic Club?

A. To the best of my memory, it was in April of 1952.

Q. And from that employment where did you go? A. I was employed by the A & B Tavern.

The Court: When and where was that?

The Witness: What was in approximately May of 1952 until December of 1952.

Q. (By Mr. Toulouse): Where is that located?

A. It is about 9600 16th Avenue S.W.

Q. Did that establishment sell spiritous liquors in any form? [292] A. No.

Q. And from that employment where did you go?

A. I went to work for the Pacific Coast Casket Company.

Q. Where is that located?

A. On Third Avenue West in Seattle.

Q. Where did you go from that employment?

A. I have been working mostly out of the Teamsters casual labor hall since then.

Mr. Toulouse: That is all, Mr. DePierris.

(Testimony of Bertrand DePierris.)

Cross-Examination

By Mr. Harris:

Q. Had you tended bar before December, 1951?

A. I was married to a woman in Portland, Oregon, that had a tavern and I helped.

Q. Is that your present wife?

A. No. It was the next wife.

Q. And the experience then that you did have at that time was not in spiritous liquor but in beer dispensing, was it? A. Yes, sir.

Q. And that is all, just beer? A. Yes, sir.

Q. And then when you came to the White Center [293] Athletic Club in December of 1951, you dispensed spiritous liquor or bar-tended spiritous liquor? A. Yes.

Q. Now, you heard Mr. Felton's testimony, did you not, concerning the liquor dispensing at the White Center Athletic Club? A. Yes, sir.

Q. Would your testimony in substance be any different than his as to what you did there?

A. No, sir.

Q. And the price you charged was the same, fifty cents? A. Yes, sir.

Q. Now, when you went to work in December of 1951, you worked for the union rate, did you not?

A. Yes, sir.

Q. Were you a member of the union, however, at that time? A. No.

Q. Who were the members or the stockholders

(Testimony of Bertrand DePierris.)

or the officers of the White Center Athletic Club, if you know?

A. I know the members, and I know the person that owns it. That confused me a little bit because it includes almost two questions.

Q. All right. Let me ask you this question then. [294] Counsel asked you I believe if you knew any of the officers at the White Center Athletic Club. I am asking——

A. I wasn't aware that there were any officers outside of one.

Q. And that one that you knew of was Pete Desimone? A. Yes, sir.

Q. But you didn't know whether it was a corporation or not, did you?

A. On my withholding slip, my W-2 form, it was listed as the White Center Athletic Club, Incorporated.

Q. Therefore, you did have some indication or some suspicion that it was a corporation?

Mr. Toulouse: I object to that, your Honor, the form of the question.

The Court: The objection is overruled.

Q. (By Mr. Harris): But you did not know who the officers of that corporation were?

A. No, sir.

Q. So far as you know John Stepich could have been an officer of the White Center Athletic Club, is that correct? A. Yes, sir.

Q. And so could Harold Hopkins? [295]

A. Yes, sir.

(Testimony of Bertrand DePierris.)

Q. As well as Pete Desimone? A. Yes sir.

Q. Had you ever been asked by any one during your period of employment at the White Center Athletic Club if you had a Federal retail liquor dealer's stamp or license?

A. Had I ever been asked if I had one?

Q. Yes. A. Yes.

Q. And do you recall the first instance that that was called to your attention?

A. I recall the instance. I don't recall the date.

Q. The instance then.

A. The instance was in a car of the State Liquor Control officers on a trip between the club and the County jail.

Q. And the officers with whom you had that conversation have testified here previously, have they not? A. Yes, sir.

Q. And to your recollection, was that the testimony of Mr. Booth and Mr. Burke?

A. To my knowledge, they were all there.

Q. You mean Mr. Turner as well?

A. Mr. Turner. [296]

Q. And you heard their testimony relative to that conversation, did you not? A. Yes, sir.

Q. Would your testimony in any way differ from what their recollection of the conversation was? A. A little.

Q. All right.

A. I don't recall Mr. Turner mentioning it so often. The only actual time I remember telling me about the retail liquor dealer's stamp was in the

(Testimony of Bertrand DePierris.)

car that one day. If he mentioned it other times, I don't really recall it.

Q. But outside of that, outside of the numbers of times that he may have mentioned it, do you find any variance in the conversation in your recollection of the same? A. No, sir.

Q. Now, were you present at the stag party on February 4? Were you and Mr. Desimone behind the bar? A. Yes, sir.

Q. Do you recall the conversation that was had then at that time? A. Yes, sir.

Q. You have heard the officers relate the substance of that conversation from the witness stand, have you not? [297] A. Yes, sir.

Q. And would your testimony be in variance with their testimony as to what was said by yourself and by them at that time? A. No, sir.

Q. Do you recall on that particular date, February 4, 1952, that Mr. Desimone pointed out thirteen bottles of spiritous liquor and said they were house stock? A. Yes, sir.

Q. Do you recall that your name appeared on one of the thirteen bottles as being house stock?

A. No, sir.

Q. Do you recall that Lyle Tinker's name appeared on two of the bottles? A. Yes, sir.

Q. Of the thirteen house bottles?

A. I am not sure of the number, but I am sure there was some liquor in his name there.

Q. And that was the same man who testified here as a character witness for Mr. Hopkins and I

(Testimony of Bertrand DePierris.)

think for Mr. Stepich, too? A. Yes, sir.

Q. Were you there on April 6, 1952? Can you recall the date? [298]

A. I don't recall the date.

Q. Do you remember Mr. Burke testifying that he saw you there for a moment and then he saw Felton and then he didn't see you any more?

A. Yes, sir.

Q. Does that help to refresh your recollection as to the date? A. Yes, sir.

Q. Were you there that evening?

A. Yes, sir.

Q. And then you absented yourself, is that correct?

A. There was some friends of mine out having dinner or drinks and I joined them at their table.

Mr. Harris: All right. That completes my examination.

Redirect Examination

By Mr. Toulouse:

Q. Mr. DePierris, did different members of the public keep their own bottles at the White Center Athletic Club? A. Yes, sir.

Q. And when you are talking about house bottles, what are you talking about? [299]

A. Generally like was said yesterday, the bottles that were brought in for a party or a group like, if I can give you an instance, of the Lions party. The reason that Mr. Tinker's name was on those bottles was because he brought them in, or I as-

(Testimony of Bertrand DePierris.)

sumed he brought them in, because of the party.

Q. In other words, they were the property of the Lions Club? A. It was a Lions party.

Mr. Toulouse: I see. That is all.

Mr. Harris: May I ask one more question.

Recross-Examination

By Mr. Harris:

Q. What do you mean by "house stock" then?

A. Truthfully, I refer to house stock as the bottles that were to be poured to a group. Otherwise, they were——. Well, it is hard to define. I mean if you were a customer and you come in and you have a bottle under your arm and if there were a group of people there, that would be considered a stock.

Q. Well, let's say then that Mr. Tinker brings in just two bottles of liquor with his name on it. Is that house stock then? [300] A. No.

Q. What do you call that?

A. It is Mr. Tinker's liquor.

Q. Now, if Mr. Tinker brings in two bottles and you serve that to the Lions Club, what do you call that?

A. If he was there—serve it to the Lions Club—well, I would consider it Lions' whiskey.

Q. All right. Now, if the White Center Athletic Club had some whiskey there and you used that, what would you call that?

A. I don't think it would have a particular name. I would just pour it.

(Testimony of Bertrand DePierris.)

Q. You don't call that with any particular name? A. No, sir.

Q. And in the trade they don't use the name "house stock" to your knowledge?

A. As a general rule, no, sir.

Q. Do you recall on February 4, 1952, Mr. Turner going to take a number of bottles, oh, possibly one hundred to two hundred bottles of liquor? Do you recall that?

A. Of him taking all the whiskey?

Q. Yes.

A. I don't recall the date. I recall him taking all the whiskey. [301]

Q. On February 4, 1952, the date of the stag party, when you stated previously that you recalled Mr. Desimone pointing out thirteen bottles of house stock, does that help refresh your recollection as to Mr. Turner advising Mr. Desimone that he was going to take all his liquor, consisting of a hundred or two hundred bottles?

A. I remember his saying that he was going to take them.

Q. And then do you remember Mr. Desimone saying that most of all that liquor belonged to the Lions Club who had a party there, do you recall him saying that? A. Yes, sir.

Q. And then do you recall him saying: "Take these thirteen bottles. This is house stock. The other belongs to the Lions Club." Do you recall that? A. Yes, sir.

(Testimony of Bertrand DePierris.)

Q. Now, what do you mean by house stock again?

A. You asked me before. I am not arguing with you now. You asked me before what I call house stock. If that is what he called it—he owned the place—that was probably what he meant was that if it were illegal whiskey he meant to take it, but as far as myself calling anything house stock, I have never used the phrase.

Q. And Lyle Tinker's two bottles then of house stock [302] was included in those thirteen bottles, were they not? A. I don't know.

Q. Didn't you previously state that they were—you didn't know how many bottles but that Tinker had some there?

A. I knew he had some whiskey there.

Q. Do you now deny that his name appeared on any of the thirteen bottles that were declared house stock at that time?

A. If whiskey that he brought in was declared as house stock, I don't recall it.

Q. Do you want to change that portion of your testimony now, is that correct?

A. It is hard——

Mr. Toulouse: I think this is argumentative.

The Court: The objection is overruled.

A. It is hard for me to say honestly about that because I didn't actually look at the labels of the bottles, each bottle that was seized by Mr. Turner. There was a lot of whiskey there, and if the whiskey that was seized by Mr. Turner had Mr. Tinker's

(Testimony of Bertrand DePierris.)

name on it, I truthfully couldn't say whether I knew it or not.

Mr. Harris: That is all.

Mr. Toulouse: That is all. [303]

The Court: Step down.

(Witness excused.)

The Court: At this time we will take about a ten-minute recess.

(Recess.)

The Court: All are present as before the recess. You may now proceed.

Mr. Spiller: If the Court please, I am going to ask for the privilege of calling a couple of witnesses out of order for the reason that two of the defendants' witnesses, both of them employees at the White Center Athletic Club, have not as yet shown up, one of them because his partner has been rushed to the hospital, and I think it essential that we have that testimony. However, I would like to call several witnesses now out of order.

The Court: That will be agreeable for you to change the order if you wish, Mr. Spiller.

Mr. Spiller: I will call Mr. Kirk first.

VAL KIRK

called as a witness by and on behalf of defendants, having been first duly sworn, was examined and testified as follows: [304]

Direct Examination

By Mr. Spiller:

Q. Mr. Kirk, will you state your name for the record? A. Val Kirk.

Q. Where do you reside, Mr. Kirk?

A. Seahurst, Washington.

Q. In what vicinity is Seahurst?

A. That is out close to Three Tree Point.

Q. Adjacent to Seattle?

A. That is correct.

Q. What is your occupation, Mr. Kirk?

A. I own and operate a pharmacy.

Q. Where is your pharmacy located?

A. 13447 First Avenue South.

Q. And in what vicinity is that?

A. Well, that is about the central part of the Highline area.

Q. Is that close in any way or in the vicinity in any way of White Center?

A. Possibly about four miles.

Q. Do you know the defendant Stepich?

A. Yes, sir.

Q. How long have you known him?

A. Oh, possibly twelve years. [305]

Q. When did you first become acquainted with him?

A. I first became acquainted with John Stepich during the war. He was the first sergeant of my

(Testimony of Val Kirk.)

outfit at Fort Lewis, and then I have known him since as he resides in our area out there.

Q. In what years was your war service?

A. From May of 1941 until the end of the war, four years and ten months.

Q. And during that period of time how long did you know John Stepich?

A. For possibly two years of that period.

Q. Was that the early two years or the latter two years? A. '42 and '43, sir.

Q. Do you know what his occupation has been in the last two or three or more years?

A. Yes, sir.

Q. What is it?

A. In the insurance business.

Q. Do you know where he conducts his business?

A. Yes, in White Center. I don't know the exact address.

Q. Have you had business dealings with him?

A. Yes, sir.

Q. During all that period of time? [306]

A. Yes.

Q. That is the last three years?

A. Yes, sir.

Q. Or more? A. Yes.

Q. And what was that business?

A. He carries some of the insurance on my home, my automobiles, my business, and also my athletic insurance for my athletic teams.

Q. Are you acquainted with his reputation for good character and good citizenship in the White Center area? A. Very well, sir.

(Testimony of Val Kirk.)

Q. For how long a period of time?

A. Ever since he has lived there.

Q. And what is that reputation?

A. Very high.

Q. Does Mr. Stepich have his own office there or does he office with an insurance company in White Center?

A. Well, I may be incorrect, but it is my impression that he has his own office and has his own agency.

Mr. Spiller: That is all.

Cross-Examination

By Mr. Harris:

Q. Mr. Kirk, did you know that Mr. Stepich was [307] in any way connected with the White Center Athletic Club? A. No, sir.

Mr. Harris: That is all.

The Court: You may step down.

(Witness excused.)

The Court: Call the next witness.

Mr. Spiller: I will call Mr. Beal.

ALBERT BEAL

called as a witness by and on behalf of defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Spiller:

Q. Will you state your name for the record?

A. Albert Beal.

(Testimony of Albert Beal.)

Q. How do you spell your last name?

A. Beal—B-e-a-l.

Q. Where do you reside?

A. My residence is at 3202 Avalon Way, Seattle.

The Court: What they call West Seattle?

The Witness: Yes.

Q. Is that in the vicinity of White Center?

A. No. My business is in White Center, not my [308] residence.

Q. What is your business?

A. I am president of Center Motors, Inc.

Q. What kind of a business is that?

A. That includes automobile dealership and auto repair.

Q. Is that new and used cars?

A. New and used.

Q. What kind of cars? A. Hudsons.

Q. And how long have you been engaged in business in that occupation and in that location?

A. Since 1951.

Q. Are you acquainted with the defendant John Stepich? A. Very well.

Q. How long have you known him?

A. Since 1951.

Q. Since what time of the year in 1951?

A. I am not exactly sure. I think it was in the middle part of '51, around in June or July.

Q. And do you know what his business is?

A. Yes, sir.

Q. What is it? A. Insurance. [309]

Q. Do you have business dealings with him?

(Testimony of Albert Beal.)

A. I do, sir.

Q. Does he carry your insurance?

A. He does.

Q. Your business insurance or household?

A. Business insurance.

Q. Do you know whether or not he has an office in White Center? A. Yes, sir, he does.

Q. Where is that office with reference to your own business establishment?

A. Right directly across the street, sir.

Q. Has that been true since 1951?

A. Yes, sir, as long as I can remember.

Q. Do you have an opportunity to see or to know whether during the business day Mr. Stepich is regularly occupied in the insurance business at his place of business? A. Yes, sir, I do.

Q. Do you know what Mr. Stepich's reputation for good character and good citizenship is among the business men in the White Center area?

A. Yes, sir, I do.

Q. Do you know what his reputation for good character and good citizenship is socially in the White Center [310] area? A. Yes, sir, I do.

Q. And will you state first of all among the business men what that reputation is?

A. Mr. Stepich, among the business men, was elected I believe to the presidency——

The Court: No. I think you ought to answer the question. Read the question.

(Last question read by reporter.)

(Testimony of Albert Beal.)

A. Very good.

Q. Now, Mr. Beal, are you a member of any civic organizations at White Center of which Mr. Stepich may also be a member? A. Yes, sir.

Q. What are those organizations?

A. White Center Lions Club.

Q. And what is his reputation for good character and good citizenship in the Lions Club?

A. The best, very good.

Q. Do you have independent knowledge as to Mr. Stepich's community activities at White Center? A. Yes, sir.

Q. State very briefly for the record what they are.

Mr. Harris: I don't think that is material.

The Court: Sustained. [311]

Q. Are you acquainted with Mr. Bruce Williams?

A. Yes.

Mr. Spiller: If the Court please, I am asking this question somewhat for the information of the Court, too. Mr. Williams is one of the witnesses whom I have called.

The Court: Do you want to explain his absence?

Mr. Spiller: I want to explain his absence which I have just learned.

The Court: You may do that. Perhaps counsel might accept your statement.

Mr. Harris: I would, your Honor.

Mr. Spiller: What I have heard from the witness during the recess is that Mr. Williams, who is engaged in the gas station business at the present

(Testimony of Albert Beal.)

time and who was employed at the White Center Athletic Club during the time laid in this indictment as a bartender, has been called to his place of business because his partner who operates the gas station has been rushed to the hospital.

The Court: Well, he can be obtained in Court, and if you need the Court's assistance by any express order or subpoena, the Court will consider any application in that connection.

Mr. Spiller: That will be all, Mr. Beal.

The Court: You may examine, Mr. Harris. [312]

Cross-Examination

By Mr. Harris:

Q. Have you ever been to the White Center Athletic Club? A. Yes, sir.

Q. Drank liquor there? A. Yes, sir.

Q. Do you, of your own knowledge, know of any connection John Stepich has with that athletic club? A. No, sir.

Mr. Harris: That is all.

The Court: You may step down.

(Witness excused.)

The Court: With respect to further character testimony as far as Mr. Stepich is concerned, how many witnesses have you contemplated calling on that subject? Three is about all one should call.

Mr. Spiller: I didn't contemplate calling any more.

The Court: You may proceed.

Mr. Spiller: Mr. Berg, please.

PETER N. BERG

called as a witness by and on behalf of defendants, having been first duly sworn, [313] was examined and testified as follows:

Direct Examination

By Mr. Spiller:

Q. Will you give your name, please?

A. Peter N. Berg.

Q. What is your occupation?

A. Store manager.

The Court: May I have the spelling of your name?

The Witness: B-e-r-g.

Q. And where is the store that you manage?

A. It is in White Center at 9837 16th Avenue S.W.

Q. What is the business that is conducted in that store?

A. We have a fish market, a meat market, and a produce stand.

The Court: He was called as a character witness? Is that what you are calling him for?

Mr. Spiller: That is correct.

The Court: Go right into the material facts as quickly as you can, please, Mr. Spiller.

Q. (By Mr. Spiller): Did you during the period from June 30, 1951, until sometime in May of 1952 do business with the White Center [314] Atheletic Club? A. Yes.

Q. Will you state for the record and to the

(Testimony of Peter N. Berg.)

Court what your business transactions with the club were during that time?

A. Yes. They had dinners at the club and we supplied them with their food stuffs, vegetables, things of that nature.

Q. And with whom did you do business at the White Center Athletic Club?

A. With Mr. Desimone, the owner.

Q. Did you understand that Mr. Desimone was the owner of the business?

Mr. Harris: I will object to that, your Honor.

The Court: You may ask him who, if he knows, was the owner of the business or the operator of the business. The Court does not require you to state a question in any form specified by the Court unless the Court makes that obviously clear, but one way to ask such a question would to be ask him: State, if you know, who was the manager? That might save several questions.

Mr. Spiller: I will ask it that way then.

Q. State, if you know, who was the owner of the business at the White Center Athletic Club?

A. Yes. [315]

Q. Will you state who was the owner?

A. Mr. Desimone, Peter Desimone.

Q. Who, if you know, placed orders with you for the delivery of food stuffs at the White Center Athletic Club?

A. Well, it is usually the cook, and Mr. Desimone himself occasionally came over and made the orders directly to us at the store.

(Testimony of Peter N. Berg.)

Q. To whom, if any one—by whom were you paid for your deliveries? A. Mr. Desimone.

Q. Would there be occasions in which you would make deliveries and Mr. Desimone was not there?

A. Oh, yes. Quite often he was not there.

Q. Would you attempt to collect for your produce from any one else?

A. No, no. We would let it ride on the books until the next order, and then we would collect for both of them at once, at a time when he would be there.

Mr. Spiller: I think that is all.

Cross-Examination

By Mr. Harris:

Q. How did you make your bills out? What title did [316] you use? A. Reliable Market.

The Court: You mean with respect to the purchaser?

Mr. Harris: Yes.

A. Just White Center Athletic Club.

Q. Did you know it was a corporation?

A. No, sir.

Q. You never made your bill out to the White Center Athletic Club, Inc.?

A. Never. We just used the letters of White Center Athletic Club.

Q. Now, how did you know Pete Desimone owned the club?

A. I just took it for granted. He ran it and he was the boss.

(Testimony of Peter N. Berg.)

Q. Did you ever go over there?

A. Oh, yes, quite often.

Q. Drank liquor there?

A. Oh, yes, you bet.

Mr. Harris: That is all.

The Court: You may step down.

(Witness excused.)

Mr. Spiller: If the Court please, I had arranged early this morning to have two very important witnesses here, one of them, Mrs. Charlotte Fulford of whom [317] we have heard, and the other would be the gentleman that Mr. Beal mentioned who was also an employee during the period of time here. I am embarrassed by the fact that they are not here. I would like to ask the Court, and I am embarrassed in asking it, but I do feel that this is a very important matter from the standpoint of the rights of all of the defendants whom Mr. Toulouse and I represent here—I would like to ask the Court either to take an early recess on my guarantee that they will be here at any time that the Court might be inclined to reconvene this afternoon or to give me a few minutes to ascertain just how long it will take to get them down here. I have made every effort, and I am sure my clients have made every effort to get the people down here.

The Court: Do you know how long you wish to argue the case when the case is ready for that stage of the proceeding?

Mr. Spiller: I would like to ask the Court for

not more than forty-five minutes for myself. If that is unreasonable, I don't know whether I can—well, I would say certainly between a half hour and three-quarters of an hour.

The Court: Mr. Toulouse, how much time, if you know, will you wish to use?

Mr. Toulouse: I should like at least a half hour, [318] your Honor.

The Court: Mr. Harris, how much time do you think the plaintiff ought to have for arguing?

Mr. Harris: I was hoping I could get by both on opening and closing in a half hour, your Honor, but in view of the length of the intermediate argument I may have to require and request more time.

The Court: Before acting upon counsel's request, in view of the number of defendants who are charged and the fact that they have not been heard from, why not call some of the witnesses here? Do you intend to call any other witnesses?

Mr. Spiller: If the Court please, I have no further witnesses.

The Court: Very well. The Court grants this request. The Court will recess until 1:30 o'clock.

(At this time a woman enters the courtroom.)

The Court: Is there any other witness available now? If there is, we will strike what the Court said.

Mr. Spiller: Could we recess until then if the Court please?

The Court: I would like to know whether or not there is another witness present.

Mr. Spiller: Yes. There is another witness [319] present.

The Court: If you wish a few moments to discuss this matter with this witness, you may do that. Be sure to return as soon as possible.

Mr. Spiller: Would five minutes be excessive?

The Court: That is quite all right.

(Recess.)

The Court: All are present as before the recess, and you may proceed with the trial.

Mr. Spiller: I will call Mrs. Fulford.

CHARLOTTE FULFORD

called as a witness by and on behalf of defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Spiller:

Q. Mrs. Fulford, will you state your name for the record?

A. My name is Charlotte Fulford.

Q. How do you spell your last name?

A. Charlotte Fulford—F-u-l-f-o-r-d.

Q. Where do you reside, Mrs. Fulford?

A. 14215 Des Moines Way. [320]

Q. Is that in the vicinity of White Center?

A. In that general direction, yes.

Q. Are you married? A. Yes.

Q. What is your husband's name?

A. Robert.

(Testimony of Charlotte Fulford.)

Q. What is his occupation?

A. He is a carpenter.

Q. Do you have a family?

A. Yes, I have one boy.

Q. How old is he?

A. About thirteen and a half.

Q. You and your husband and your son all reside together?

A. Yes, sir.

Q. At the address that you gave us as your home?

A. Yes.

Q. Mrs. Fulford, what was your occupation during the period commencing July 1, 1951, and ending in June of 1952?

A. I worked in the office of the White Center Athletic Club.

Q. And for whom did you work?

A. Mr. Desimone.

Q. Had you known Mr. Desimone prior to the 1st day [321] of July, 1951?

A. Yes. I worked there as a waitress previous to that.

Q. For whom did you work then?

A. Mr. Desimone.

Q. At the same place?

A. Yes.

Q. Are you acquainted with the defendants John Stepich, Harold Hopkins, Bert DePierris and Russell Felton?

A. Yes.

Q. What connection, if you know, did Russell Felton have with the White Center Athletic Club? I mean during this period from July 1, 1951, through June 20, 1952.

(Testimony of Charlotte Fulford.)

A. He worked there as a bartender.

Q. For whom did he work?

A. Mr. Desimone.

Q. What connection, if any, did the defendant Bert DePierris have during that same period of time with the same establishment?

A. He worked there as a bartender.

Q. For whom? A. Mr. Desimone.

Q. What connection, if any, did Harold Hopkins have with that establishment during the same period of [322] time?

A. Nothing. They had their meetings there on Monday nights or they come in there for dinner.

Q. Who are "they"?

A. The Lions Club. They had dinner there on Monday nights.

Q. What Lions Club?

A. The White Center Lions Club, a group of men, about twenty or forty men would have a meeting there, have their weekly dinner there.

Q. Was Mr. Hopkins employed at the White Center Athletic Club? A. No.

Q. Did he ever, to your knowledge, exercise any act of managership? A. No.

Q. —any act of managership with the club or for the club? A. Not that I know.

Q. Now, with respect to the defendant Stepich, what, if any, was his connection with the business during the same period of time? A. Nothing.

Q. Did you ever see Mr. Stepich perform any

(Testimony of Charlotte Fulford.)

act of managership or of operation of the business carried on at [323] that establishment?

A. No.

Q. What service did you perform or render as an employee at that establishment during the period of time mentioned? What was your function there?

A. Well, I worked in the office, which was also the cloak room. I gave out change to people playing the machines, checked their hats.

The Court: You gave out change for what?

The Witness: For people playing the machines.

Q. What machines?

A. The slot machines.

The Court: You may continue the statement as to any other kind of work you did.

A. (Continued): Well, I checked in the hats, coats, bottles, etc. The people had to go past the check room to come in.

The Court: Anything else you did?

A. (Continued): Well, I handled the money or paid any bills that any one came to collect while I was on the shift and paid the help, like on pay day if Mr. Desimone wasn't there, because I had the money in the office there to pay them.

Q. Mrs. Fulford, approximately how many employees were there at any one time during the period that has [324] been mentioned here, that is, between July 1 of '51 and July of 1952?

A. I couldn't say positively. There were two bartenders, Russell Felton and Bert DePierris, and then there would usually be two or three waitresses,

(Testimony of Charlotte Fulford.)

and then we had people that worked in the kitchen, cook and cook's helper.

The Court: How many waitresses?

The Witness: Well, I would say two or three. It varied.

The Court: What other employees did you mention before?

The Witness: Cook and a cook's helper in the kitchen. Then we had banquet waitresses who would come in, about two banquet waitresses when we had a banquet to serve the dinners.

The Court: How many would you usually have?

The Witness: About two banquet waitresses.

The Court: They were special employees, is that right?

The Witness: Yes. That is right.

The Court: They were in addition, were they not, to the two regular waitresses?

The Witness: Yes.

The Court: You may inquire. [325]

Q. (By Mr. Spiller): Mrs. Fulford, what kind of business was operated there by the White Center Athletic Club? Just describe it as a business, that is to say the kind of service you performed, what, if anything, you sold; what, if anything, was done in the name of the business?

A. Well, it was a bottle club. People checked in their bottles. They would come in to have drinks, dance, have dinner.

Q. You have already said that you had dinners for groups like the Lions Club? A. Yes.

(Testimony of Charlotte Fulford.)

Q. Generally during what portion of the business day was the White Center Athletic Club open?

A. Nights.

Q. Was it ever open during the day for any service? Let's say in the afternoon and before 6:00 or 7:00.

A. Well, yes, it was open, but most of the people—I mean most of the business was at night, because people could come and check their bottles in and have a drink any time they wanted to when we were open.

Q. Mrs. Fulford, when it would be open in the afternoon, how many employees would that involve?

A. Oh, just usually one or possibly two.

Q. And what would that one or possibly two be doing there? [326]

A. Well, it would be the bartender.

Q. The bartender would have the place to himself, would he?

A. Yes, because there would be maybe four or five people come around in the afternoon.

Q. Now, to your knowledge, was Mr. DePierris or Mr. Felton employed there as an afternoon bartender?

A. Well, at times. I mean we would change shifts whenever it was necessary. I mean if we weren't busy in the evenings, well, we would have them work a little bit in the daytime.

Q. What I am principally getting at is were there any other bartenders in addition to Mr. Felton

(Testimony of Charlotte Fulford.)

and Mr. DePierris employed at any time during the period of time we are talking about?

The Court: You mean afternoons?

Mr. Spiller: If there were other bartenders besides Felton and DePierris during the year.

A. Well, yes.

Q. May I ask you this, too? In your statement of the employees there, did you also have a janitor?

A. Yes.

Q. Would that be in addition to the employees that you have previously mentioned such as the cook, etc.?

A. Yes. [327]

Q. And in connection with your catering to organizations such as the Lions Club, do you know whether or not there were any acts, musicians or entertainment of any sort provided by the White Center Athletic Club?

A. Well, yes, I believe there was at that period.

Q. Now, the inside of the establishment, was that one big room or was it divided into several rooms?

A. It was primarily one large room and then we had the kitchen which was off to the back, and then we had—it could be partitioned off with drapes so that it could be just partially used for private parties, private meetings, etc.

Q. As you would enter the door, was there a definite cloak room area?

A. Yes.

Q. Where was that as you entered?

A. To your right or left as you entered the door? It would be to the left.

(Testimony of Charlotte Fulford.)

Q. And to your right, was there a definite separate area?

A. Well, when you entered the club, you entered into a lobby, and the cloakroom was the left, and then you had to go through another door which would open into the main room, the main building.

Q. Where was the office? [328]

A. Well, that was where the cloakroom was, to the left as you entered the front door.

Q. Was it office and cloakroom?

A. Combined.

Q. Will you state whether or not there was a partition between the cloakroom area and the office area?

A. No, there wasn't.

Q. It was all one area?

A. It was all one area.

Q. How would you gain admittance to the cloakroom?

A. Well, there was a door from the lobby, and there was another door to go out into the club. However, those doors were always kept closed. No one was admitted.

The Court: May I interrupt? Can you each return at 1:30?

Mr. Harris: Yes, your Honor.

Mr. Toulouse: Yes, your Honor.

Mr. Spiller: Yes, your Honor.

The Court: The Court is recessed until 1:30.

(At 12:00 o'clock p.m., Friday, April 23, 1954, proceedings recessed until 1:30 o'clock p.m., Friday, April 23, 1954.) [329]

(Testimony of Charlotte Fulford.)

April 23, 1954—1:30 P.M.

The Court: The witness previously on the stand will resume the stand for further interrogation. You may proceed.

Mr. Spiller: May I ask the reporter to read the last question and answer?

The Court: You may do that.

(Last question and answer read by the reporter as follows: Q. "How would you gain admittance to the cloakroom? A. Well, there was a door from the lobby, and there was another door to go out into the club. However, those doors were always kept closed. No one was admitted.")

The Court: To which rooms did you refer when you said no one would be admitted?

The Witness: That was the office.

The Court: You may inquire.

Q. (By Mr. Spiller): Now, Mrs. Fulford, the cloakroom and the office, was that one room without any partition or was the office in any way separated from the cloakroom department?

A. Well, the cloakroom was a little room in the office or—was a little room. [330]

Q. By itself? A. It had a door to it, yes.

Q. That is what I meant. And was there any opening from the cloakroom part, separate from that door, by means of which a hat or a coat could be handed in or handed out?

Mr. Harris: I am going to object to that, your

(Testimony of Charlotte Fulford.)

Honor. It is leading, first of all, and, secondly, there are two questions there.

The Court: Read the question.

Mr. Spiller: I would like to withdraw the question.

The Court: You may do that.

Q. If a patron wanted to leave his hat and overcoat in the cloakroom, how would he accomplish that?

A. Well, he would walk up to the office and ask me to check his hat or coat.

Q. Would he go through the office?

A. No, he couldn't. The doors were locked. There was a sort of a half door so that you could see over it, but I was on one side and the patrons were on the other side.

Q. Was that the only door to the cloakroom proper, the cloakroom itself?

A. There was only one door to the cloakroom.

Q. And that was divided in two, is that correct?

A. No. [331]

Q. You could open half of it you said?

A. You could open—the cloakroom was a little room in the office. However, no one could get to the cloakroom unless they were in the office. They would have to speak to me over the half door.

Mr. Spiller: I wonder if you would give the witness that blank piece of paper and she may draw a little sketch.

The Court: You may do that.

(Bailiff hands sheet of paper to witness.)

(Testimony of Charlotte Fulford.)

Q. Now, on your sketch will you indicate by the letter "O" the office part?

A. I have already written it on here.

Q. And have you indicated by some word or by some letter the cloakroom part? A. Yes, sir.

Q. Can you also indicate on that sketch the main entrance into the club as you come in?

A. Yes.

Mr. Spiller: Now, may I have that sketch?

Mr. Harris: I think it ought to be marked. It is something handed to the witness while she was in the witness chair.

The Court: He may look at it for the moment.

Mr. Spiller: Might I ask the witness to add [332] to the sketch then?

The Court: Have it marked Defendant's Exhibit A-1.

(Sketch marked Defendant's Exhibit A-1 for identification.)

Q. (By Mr. Spiller): Will the witness then add to that sketch—it doesn't have to be to scale—the remaining part of the premises wherein the bar is, where the slot machines are, and the tables for the serving of food and serving other things?

The Court: I have never yet seen a freehand sketch that was worth anything to me, and it is not worth usually the time for producing it. This may be the one exception. We will see.

(Witness draws on sketch.)

(Testimony of Charlotte Fulford.)

Q. Mrs. Fulford, your usual employment was during what part of the day or evening or night?

A. I would go to work about 6:30 or 7:00 o'clock in the evening and work until the club closed at approximately 2:00 in the morning.

Q. What were your specific duties?

A. I worked in the office. I checked hats, coats, bottles, admitted people to the club, members and their [333] guests.

Q. Did you work there regularly evenings during the entire period? A. Yes.

Q. From June 30, 1951, to June 30, 1952?

A. Yes.

Q. Did you have access to the office at all times that you were in employment there? A. No.

Q. What would be the facts with reference to your access to the office then? Will you explain that?

A. When I worked as waitress there, I didn't have access to the office.

Q. Were you working as a waitress on some of the shifts during the period from June, 1951, to June, 1952? A. I don't believe so.

Q. I am speaking specifically now during that particular period of time while you were checking hats, making change, etc., did you then have free access to the office? A. At that time, yes.

Q. Was there change, currency, money, to which you had access in the office during your working hours? A. Yes.

(Testimony of Charlotte Fulford.)

Q. And for what purpose did you have access to the money? [334]

A. For making change for the machines or paying the help if Mr. Desimone wasn't there, if it was on Saturday night or pay day.

Q. And during this period of time about which we are talking, do you know of any one other than Mr. Desimone who had regular access to the office at times when you were on shift and working?

A. No, no one.

Q. To your knowledge, did Mr. Stepich specifically have access to the office for any purpose?

A. Absolutely not.

Q. During the time that you were on duty evenings did Mr. Hopkins have access to the office for any purpose? A. No.

Q. Did Mr. DePierris have access to the office for any purpose during the evening? A. No.

Q. There has been some testimony here that on one occasion in May of 1952 a Mr. Daggett appeared at the club during the evening. Do you know Mr. Daggett? A. No, I don't.

Mr. Spiller: May I ask if Mr. Daggett, who is present in the courtroom, may rise for the purpose of asking whether she knows him?

The Court: Yes. [335]

(Mr. Daggett rises.)

Q. (By Mr. Spiller): I will ask you to observe the gentleman that stood up in the third bank there

(Testimony of Charlotte Fulford.)

and say whether or not you recognize him at all as having ever been there.

A. I don't recognize him at all.

Q. Who closed the place up at night after the last customer had gone?

A. I did if Mr. Desimone wasn't there; I did.

Q. Approximately, in an average week, how many times would you be left to close the place, if you recall?

A. It is a hard question to answer. For the most part, he was there, but there were occasions when he wasn't.

Q. In other words, was it with any regularity that you closed up the place? A. No.

Q. On the occasions when you would close it, what would you do with the money in the office, if anything? A. Put it in the safe.

Q. Did you have the combination to the safe?

A. Yes.

Q. To your knowledge, did any one else have the combination to the safe beside yourself and Mr. Desimone? A. No.

Q. Would it be your practice when you were there [336] alone to total the receipts?

A. Yes.

Q. —total the receipts from the club, the machines, change from the machines, the bar?

A. Every day.

Q. What would you do with those receipts?

A. I would always leave them for Mr. Desimone on his desk.

(Testimony of Charlotte Fulford.)

Q. In the office? A. In the office.

Q. Did you have anything to do with keeping the books of the business other than totaling up the receipts?

A. Well, I made out the payroll sheets for the people on the payroll and all those things. It was turned over to Mr. Whittle, the bookkeeper.

Q. You would take totals from some records in the office then to turn over to Mr. Whittle?

A. I didn't do that. Mr. Desimone took care of that.

Q. I misunderstood you then before, but you kept the hours, did you, for the employees?

A. Yes.

Q. And made up the totals as to the payroll then from your record of hours, etc.?

A. That is right.

Q. Were all those records kept in the [337] office?

A. Yes, until they were turned over to Mr. Whittle, and I don't know if he returned them or not.

Q. Who was Mr. Whittle?

A. He is an accountant, a bookkeeper in Smith Tower.

The Court: Spell his name, if you can.

The Witness: W-h-i-t-t-l-e.

Q. How were you paid for your services?

A. By the week.

Q. Were you on a regular salary or did it depend upon the number of shifts that you had worked in the week?

(Testimony of Charlotte Fulford.)

A. We were paid so much a day—I mean I was paid.

Q. What was your daily wage?

A. I think about eight dollars, approximately.

Q. Did that remain the same during the entire period of time that you worked there, during the entire period involved in this case, that is between June 30 of '51 and June 30 of '52? A. Yes.

Q. Did you have anything to do with keeping track of the income and expenditures of the club?

A. No. I kept track of any transactions that I did personally on my shift.

Q. But generally as to other expenses and income of the club you had no responsibility?

A. No. [338]

Q. Did you have any agreement with Mr. Desimone other than an agreement to work as an employee and to be paid for your services as such employee at any time? A. No.

Q. Did you ever have a conversation with Mr. Desimone relating to the presence or absence of a retail liquor dealer's stamp for the place?

A. No.

Q. Did you ever overhear Mr. Desimone in conversation with any one else discussing a retail liquor stamp?

Mr. Harris: I will object to that. It would be hearsay, your Honor.

Mr. Spiller: Not in Mr. Desimone's presence.

The Court: The objection is overruled.

Mr. Spiller: Will you read the question?

(Testimony of Charlotte Fulford.)

(Last question read by reporter.)

A. Yes.

Q. Will you state what the occasion was?

A. When the Liquor Board enforcement officers were there one night. I believe it was Mr. Booth that asked, one of the enforcement officers at any rate.

Q. Could you say about when that was? In what year?

A. I don't know exactly when it was.

Q. Will you state where the conversation took place?

A. In the office at the club. [339]

Q. Do you recall whether in addition to yourself, Mr. Desimone and Mr. Booth, any one else was present?

A. There was a lot of people at the club.

Q. In the office?

A. No, not in the office.

Q. Nobody then, as you recall, other than yourself, was present in the office. Now, state to the Court and for the record what was said touching a retail liquor stamp on that occasion.

A. Well, the enforcement officer asked if there was a retail liquor stamp there, and Mr. Desimone said that there was no retail liquor stamp because we were merely serving people their own liquor.

Q. Do you happen to recall Mr. Desimone's language at the time, precisely what he said? You are relating it in the third person. I would like to have his conversation if you recall it.

A. Just word for word, no.

(Testimony of Charlotte Fulford.)

Q. Do you recall part of the conversation word for word?

A. Well, Mr. Desimone simply told the enforcement officer that we didn't need a liquor stamp, and any how that wasn't up to——

Q. Did he give a reason for that?

A. Yes, because he said we were only serving people [340] their own liquor out of their own bottles. We weren't selling liquor.

The Court: That has already been said by this witness. You should identify the enforcement officer if that is possible.

Mr. Spiller: I think the enforcement officer has been identified as Mr. Booth.

The Witness: I think it was Mr. Booth.

Q. Now, did you yourself during the period between June of 1951 and July of 1952 ever serve drinks from the bar at that place of business?

A. No.

Q. You never served them yourself?

A. No.

Q. Did you ever sell liquor by the drink during that period of time to any one? A. No.

Q. What would be the maximum number of bottles in or on the bar at one time during that period from June of 1951 to June of 1952?

A. At one time we had over six hundred bottles on the shelf on the back of the bar. Some of those bottles had stood for possibly two years without ever being touched, except once a week some of the girls took all the bottles off, polished the mirror,

(Testimony of Charlotte Fulford.)

dusted them, and put them back, [341] but there were at least six hundred of them there, more than six hundred in fact.

Q. And to whom, if you know, did those bottles belong?

A. They belonged to the members, and each of the bottles had the member's name on it, the brand of whisky, the date it was brought in there.

Q. Did you ever have any discussion with any one at the place of business or elsewhere respecting the presence or absence of a liquor stamp at that place of business other than the conversation you overheard and to which you have recently testified? Did you ever talk about an RLD stamp to any one?

A. Yes, to other people, not with reference in particular to the club, but I have talked.

Q. I am talking about with reference to the club. Did you ever discuss it with any one? A. No.

The Court: We will take a recess in these proceedings for at least ten minutes and those connected with it may now be excused.

(Recess.)

The Court: All are present as before the recess. You may resume the interrogation of the witness Mrs. Fulford. [342]

Mr. Spiller: At this time, if the Court please, we will excuse the witness, Mrs. Fulford. I would like, however, to offer for what it is worth the Defendant's Exhibit A-1 just for the purpose of clarifying her oral testimony as to the layout of the establishment.

(Testimony of Charlotte Fulford.)

Mr. Harris: No objection.

The Court: It is now admitted.

(Defendant's Exhibit A-1 received in evidence.)

The Court: You may cross-examine.

Cross-Examination

By Mr. Harris:

Q. Mrs. Fulford, have you ever been convicted of a crime? A. Yes.

Q. Did one of your duties, other than those already outlined by yourself, consist of screening anybody that happened to come to the White Center Athletic Club to gain admittance?

A. Well, we admitted members and their guests.

Q. And did you admit any one who was not a member?

A. On occasions when we had banquets. The people [343] that came to the banquets weren't necessarily members.

Q. On occasions other than the banquets, did you admit persons other than members?

A. Members and their guests only.

Q. If the guest was there without the member and sought admission, would you allow that person in?

A. If I knew that they were guests of a certain member and they had their own liquor, the member had brought them in there before, and I knew that they were their guests, on occasion I would do that.

(Testimony of Charlotte Fulford.)

Q. But you never made an exception to that, is that correct? A. No.

Q. And you say you have never seen Mr. Daggett before, the gentleman who rose here in the courtroom and whom you were asked to identify?

A. That is right.

Q. Do you deny that you ever saw him?

A. I have no recollection of seeing him.

Q. Do you deny ever having seen him, however?

A. To my knowledge, I haven't seen him.

Q. All right. Now, you have mentioned the Lions Club. Has the Dr. Edward Lincoln Smith Orthopedic Guild ever held a banquet at the White Center Athletic Club while you were there? [344]

A. Yes.

Q. Do you recall in particular the instance of February 29, 1952, that being Leap Year, the day when they held such a banquet? A. Yes.

Q. Do you recall whether or not you yourself made arrangements for that banquet?

A. I don't recall that, no.

Q. Do you recall on the 29th of February, 1952, that you presented a bill to a Mrs. Noble for payment of the number of dinners that were served?

A. I could have.

Q. And that she paid you?

A. She could have.

Q. And that you gave her a list of liquor and stated to her in substance that this is the liquor you are supposed to have brought in here, if anybody asks you?

(Testimony of Charlotte Fulford.)

A. When any one checked liquor in, they were given receipts for it. All the receipts for the liquor was made out in duplicate; one receipt went on the bottle; the other went to the person who checked the liquor.

Mr. Harris: May I have the question read to the witness?

The Court: Yes. [345]

(Last question read by the reporter.)

The Court: Answer it if you can.

The Witness: I don't know how to answer that particular question.

Mr. Spiller: May I ask the Court if the witness may be allowed to explain why she does not know how to answer that question?

The Court: The request is denied. You may inquire.

Q. (By Mr. Harris): What part of the question do you not understand, Mrs. Fulford?

A. The receipts for the liquor could have been left in the office for me to deliver to whomever was in charge of the party for that night, because when a quantity of liquor is checked in, it takes quite a long time to label each bottle and write out each receipt individually, and it has happened on occasions where people didn't stay there and wait for whoever was in charge to label all of the bottles in order for them to get the receipts, because the receipts, as I explained before, were made in duplicate, one put on the bottle, the other given to the customer, and, therefore, those receipts may have

(Testimony of Charlotte Fulford.)

been left in the office for me to give to the person in charge of the party at the time. [346]

Q. Did you give such a list to Mrs. Noble?

A. I could have.

Q. And when you gave her that list, did you tell her: "Here is the list of liquor so that in the event some one asks you you will have this list available"?

A. If she was asked to claim her liquor or——

The Court: I believe the question is, did you make a statement to her of that nature, of that tenor and effect? Read the question.

(Last question read by reporter.)

A. I am sure I didn't say that exactly.

Q. Exactly? What words did you use when you gave her the list?

A. I couldn't tell you. I don't know.

Q. In substance and effect did you not say when you handed that list to Mrs. Noble: "Here is the list of liquor that is supposed to belong to you, and if any officers come asking you any questions about the liquor, the liquor on this piece of paper is supposed to be your liquor brought into the White Center Athletic Club by your Guild"? A. No.

Q. You deny saying anything similar to that, is that correct? A. That is right. [347]

Q. Mrs. Fulford, you are being handed what is marked for identification as Plaintiff's Exhibit 3. I will ask you to look at that, particularly the handwriting, and state whether or not the handwriting of the number of bottles, the type liquor, resembles

(Testimony of Charlotte Fulford.)

your handwriting? A. It resembles it, yes.

Q. Did you make such a list from which Plaintiff's Exhibit 3 for identification is a photostatic copy? A. I could have.

Q. Do you know Sylvia Fair?

A. No, I don't.

Q. Vera McCracken? A. No.

Q. Who were some of the other bartenders that worked there during the period commencing on June 30, 1951, up to and through May 8, 1952, other than Mr. DePierris and Mr. Felton?

A. There was a man by the name of Ralph Murray, and Benny—I can't recall his last name. The records would show it, I believe. Benny Richards, it was. And Dennis—Denny we called him—I don't recall his last name.

Q. Do you recall any others?

A. I don't believe so.

Q. Did the White Center Athletic Club have a retail [348] liquor dealer's stamp?

A. Not to my knowledge.

Q. Do you recall on May 6th at approximately 8:00 o'clock in the evening that some one person came to the White Center Athletic Club and sought admission at that time and you questioned whether or not he should be admitted?

A. That would be impossible to answer.

Q. All right. Do you recall on that particular occasion that you requested the assistance of John Stepich in order to identify the individual?

A. I don't recall any such occasion, no.

(Testimony of Charlotte Fulford.)

Q. And is it your testimony that John Stepich and yourself have never at any time been in the cloakroom together at the same time?

A. That is right.

Q. And that John Stepich has never been in the small room or coin room where you get rolls of dimes and nickels to play the slot machines?

A. The only occasion that he possibly could have had to go through the front office would have been to—they kept their Lions badges, etc., in back on top of the safe, and they only took them out on Monday night, and he could have gone through the office at that particular time to get those badges and flags, etc., for their [349] meetings. Other than that, no one was allowed in the office.

Q. John Stepich was allowed in the office?

A. On Monday nights, to walk through there to get their Lions Club paraphernalia, and that was all.

Q. He was allowed in there with that qualification?

A. That is all.

Q. But Bert DePierris wasn't allowed in there at all, was he?

A. No, he wasn't?

Q. And neither was Russell Felton, is that your testimony?

A. That is right.

Q. Do you recall the evening of April 6, 1952?

A. Not without relation to some incident.

Q. All right. When Russell Felton was present, and Mr. Turner, Mr. Booth and Mr. Burke arrived there and had a discussion with him?

A. I am quite sure I was probably there.

Q. Do you recall that at that time Mr. Felton

(Testimony of Charlotte Fulford.)

was pretty dissatisfied with the position that he had been left in? A. Yes.

Q. And do you recall that you attempted to keep him quiet? [350]

A. Well, I think—I am sure he was upset. I mean because he didn't like to be arrested, and here he was just working part time, and he had just come to work probably only to work for a couple of hours.

Mr. Harris: May I have the question read?

The Court: Read the question.

(Last question read by the reporter.)

The Court: I think the answer is yes or no. That is all that is asked for.

A. Yes.

Q. Why did you attempt to keep him quiet and keep him from talking to the officers?

The Court: Now you can make any explanation that you feel should be made.

A. Well, it wasn't a question of keeping him from talking to the officers. I felt that there was no need to get upset about being arrested—I mean if that was the way it had to be. I mean Mr. Desimone had left——

Q. Do you deny that you attempted to keep him from talking to the officers?

A. We all talked to the officers. He could talk to them all he felt like.

Mr. Harris: May I have the question read to the witness?

The Court: You may. [351]

(Testimony of Charlotte Fulford.)

(Last question read by reporter.)

A. I deny it, yes.

Q. That you didn't attempt to, is that correct?

A. That is right.

Mr. Harris: That is all.

The Court: Any further questions?

Mr. Spiller: Just one question, if the Court please.

Redirect Examination

By Mr. Spiller:

Q. You have testified that you have been convicted of a crime. What was that?

A. Possession of liquor.

Q. And when was that? Just within what period of time? A. Just last May, I believe.

Q. Last May or May of 1952?

A. No. It was 1952.

Q. Was it in connection with the White Center Athletic Club? A. Yes.

Mr. Spiller: That is all.

The Court: Possession of liquor, do you say?

The Witness: Yes. [352]

Q. (By Mr. Spiller): Was that in Justice Court in King County? A. Yes.

Mr. Spiller: That is all.

Mr. Harris: That is all.

The Court: You may step down.

(Witness excused.)

The Court: Call the next witness.

ELROY LAURENCE McINTYRE

called as a witness by and on behalf of defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Toulouse:

Q. What is your complete name, Mr. McIntyre?

A. Elroy Laurence McIntyre.

Q. Will you spell your last name for the Court?

A. M-c capital I-n-t-y-r-e.

Q. Where do you live, Mr. McIntyre?

A. 14431-8th Avenue South.

Q. How long have you been a resident of Seattle?

A. Since 1921 except for from 1930 to 1942 when I was in Spokane. [353]

Q. During what period of time have you known Mr. Harold Hopkins?

A. I have known Mr. Hopkins since about April, 1947.

Q. In what connection did you know Mr. Hopkins?

A. Well, I have a dental laboratory at 9424 Delridge Way, and Mr. Hopkins at that time had a cafe, a small cafe, across the street from me. It was in the 9400 block on 17th. Delridge and 17th come in together there.

The Court: What year was that?

The Witness: That was from 1947 until Mr. Hopkins closed the place. That was just last——

(Testimony of Elroy Laurence McIntyre.)

The Court: Was 1947 the earliest year of your acquaintanceship?

The Witness: Yes, your Honor.

The Court: You may inquire.

Q. (By Mr. Toulouse): How long, to your knowledge, did Mr. Hopkins operate this cafe that you are talking about?

A. Well, all during that period until he sold out, and I can't remember——

Q. Specifically, did he operate it during the year 1951 and the year 1952? A. Yes.

Q. How frequently did you see Mr. Hopkins during the year 1951 and the year 1952? [354]

A. Well, just about every day.

Q. How would you happen to see him?

A. Well, I ate lunch in his restaurant practically every day.

Q. Are you acquainted with Mr. Hopkins' general reputation in the White Center area?

A. Yes.

Q. Are you familiar with his reputation for veracity and good citizenship?

Mr. Harris: I am going to object to that.

Mr. Toulouse: I withdraw the question.

Q. Are you familiar with his general reputation for good character and good citizenship?

A. I have always considered his character excellent.

Q. First, are you familiar with his general reputation in that community for good character and good citizenship? A. Yes.

(Testimony of Elroy Laurence McIntyre.)

Q. Now, what is that?

A. As far as I know, it has always been excellent. He was well liked in the community.

Mr. Harris: He has answered the question, your Honor.

The Court: That is sufficient.

Q. Are you acquainted with Mr. Hopkins' [355] family? A. Yes.

Q. Does he have a family? A. Yes.

Q. How many children does he have?

A. Four, I believe.

Mr. Toulouse: That is all.

Cross-Examination

By Mr. Harris:

Q. Ever been to the White Center Athletic Club?

A. I was there on one or two occasions.

Q. Ever drank liquor there?

A. About two drinks is all.

Q. Have you heard that Harold Hopkins has held himself out as secretary-treasurer of that club?

A. No.

Mr. Harris: That is all.

The Court: You may step down.

(Witness excused.)

The Court: Call the next witness.

Mr. Spiller: If the Court please, I would, just prior to resting of the defendants' case, I would like to state to the Court that because of a misunderstanding upon my part I neglected to ask two of the witnesses [356] this morning who appeared

here as character witnesses for Mr. Stepich the same questions with respect to Mr. Hopkins. Mr. Harris has advised me——

The Court: You may call them back. Are they here now?

Mr. Spiller: I think we can do it by stipulation. Mr. Harris has agreed with me, if the Court is willing, that the record may show that Mr. Val Kirk and Mr. Al Beal, the pharmacist and the Hudson Motor dealer at White Center, would testify to the good character of Mr. Hopkins as well as of Mr. Stepich.

The Court: Does the Government so stipulate?

Mr. Harris: It may be stipulated, your Honor.

The Court: That stipulation may be entered and the Court will consider it.

Mr. Spiller: With that, the defendants rest, if the Court please.

The Court: Each and all of the defendants now rest, do they?

Mr. Spiller: As to each and all of the defendants.

The Court: Any rebuttal?

Mr. Harris: No, your Honor.

The Court: We'll take about a fifteen-minute recess at this time. [357]

The Court: Let the record show that all are present as before the recess.

Any rebuttal?

Mr. Harris: No, your Honor.

The Court: Plaintiff rests?

Mr. Harris: Yes, your Honor.

The Court: As I understand it, all other parties,

in particular each and all of the defendants, now rest?

Mr. Spiller: That is true, your Honor.

The Court: Was there something you wished to say before we hear the arguments?

Mr. Spiller: Just a formal renewal for the record of the several motions that have been made, if I may have just a moment at this time.

The Court: You may make that.

Mr. Spiller: I would like to renew for the sake of the record and without elaboration the motion to dismiss the indictment made before the hearing herein upon the ground and for the reason that, as heretofore stated, the indictment states an ambiguous single charge as to which the defendants and their counsel have been unable to determine precisely what the charge against them is.

I would like, also, for the sake of the record, to renew the defendants' motion to strike the following exhibits, that is to say Exhibit 1, being the verification [358] of Harold Y. Hopkins before Max Nicolai, Plaintiff's Exhibit 2 and each and every component sheet thereof, Plaintiff's Exhibit 4 and each and every component sheet thereof, and Plaintiff's Exhibit 5 and each and every component sheet thereof, each of said exhibits and the several component sheets of the exhibit bearing a signature of an individual defendant in this case, as to which signature and the making of the signature there has been no proof of the making thereof, no identification from any witness who has identified the signatures or the documents, and for the further

ground and the further reason that Title 28 of the U. S. Code, §1733, does not permit the introduction of said exhibits.

I would like, also, for the sake of the record to renew the motion for acquittal made at the conclusion of the Government's case, the motion being for each and every one of the defendants, and I renew that motion upon the ground and for the reason that the Government's case in chief did not prove facts sufficient to authorize a conviction in this case.

The Court: The motions, and each and all of them, are denied. Were those all the motions?

Mr. Spiller: Those were all the motions.

The Court: I don't think we ought to work in this case any longer than 4:30 o'clock. Can all of you [359] finish your arguments by that time?

Mr. Harris: I will make every effort.

Mr. Spiller: I will make every effort to confine myself if the Court please.

The Court: I will hear counsel for the plaintiff at this time.

(Mr. Harris summed up the evidence to the Court on behalf of the plaintiff.)

(Mr. Spiller summed up the evidence to the Court on behalf of the defendants.)

(Mr. Toulouse summed up the evidence to the Court on behalf of the defendants.)

The Court: A conspiracy, as the word is used in the conspiracy law and in this indictment and, in particular, Count I thereof, is an agreement between two or more persons acting upon a common purpose to commit an offense, insofar as this case is con-

cerned the particular offense which is described in this Count I of the indictment.

There can be no conspiracy of any kind unless three elements are present. Those are: First, the act of conspiring together of two or more persons; Second, to commit the particular offense charged in the indictment; and, Third, the doing of something in furtherance of the unlawful design. [360]

There is no such thing as one person conspiring. A person who alone plans and commits a criminal act is not guilty of conspiracy. It is not necessary to render a person guilty of conspiracy that he be one of the original persons forming the conspiracy. He may have joined it after its formation, and if so, he thereby becomes as guilty as one of the original conspirators. However, to render such a person guilty under such law, it is necessary that after he has become a member of such conspiracy some act be done by one of the conspirators toward carrying out the unlawful agreement of the conspiracy, although it is not necessary that such act accomplish the purpose of the conspiracy. It is only necessary that such act be done for the purpose of carrying the conspiracy into effect whether it is finally consummated or not.

In order to establish the guilt of a particular defendant under the conspiracy count, it is necessary that the Government prove by the evidence beyond a reasonable doubt, first, that the conspiracy was formed as alleged, and that it was entered into by the particular defendant as charged and, second, that within the jurisdiction of this Court, after that

particular defendant became a member of such conspiracy, one or more of the overt acts of the conspiracy were committed as alleged in the indictment. [361]

The common design, purpose, agreement and co-operation among the participants in the conspiracy are the essence of it. To prove that a conspiracy existed and was in operation, it is not necessary that two or more persons entered into a written or express agreement or made any formal declaration acknowledging membership in the conspiracy, but it is necessary to prove by competent evidence beyond a reasonable doubt that they knowingly and intentionally co-operated in furtherance of the common unlawful plan previously formed.

Conspiracy may exist either to do something unlawful or to do a lawful thing in an unlawful way.

It is not necessary that the Government prove every overt act as charged in the conspiracy count. Proof of one such act occurring within this Court's jurisdiction is sufficient.

A conspiracy may be established by circumstantial evidence or by deduction from all the facts proved. The common design is the essence of the crime, and this may be made to appear when the parties steadily pursue the same object, whether acting separately or together, by common or different means, if such conduct of the parties leads to the same unlawful result.

If the parties acted together to accomplish something unlawful as charged, a conspiracy is shown even [362] though individual conspirators may have

done acts in furtherance of the common unlawful design apart from and unknown to the others. All the conspirators need not be acquainted with each other. They may have not previously associated together. One defendant may now know but one other member of the conspiracy, but, if knowing that others have combined to violate the law, a party knowingly co-operates to further the object of the conspiracy, he becomes a party thereto.

The Court finds, concludes and decides from the evidence in this case beyond a reasonable doubt that the material allegations in Count I of this indictment are sustained; that all of the overt acts set forth in the indictment, except the fifth one, have been established; and that they are all referable to the conspiracy alleged in that count and tend to a more complete and effectual accomplishment of the conspiracy set forth.

As to over act "1," the Court does not have the view that every one of the defendants participated therein. The Court also is of the opinion and finds it is not necessary that every one of them did so if there were two of them who did, and the Court finds, concludes and decides from the evidence beyond a reasonable doubt that there were two or more of the named defendants who participated in that overt act. [363]

Further from the evidence beyond a reasonable doubt the Court finds, concludes and decides that as to said Count I of this indictment in this Cause No. 48570 against the defendants and each and all of them that the defendants are guilty as charged in

said indictment and in particular Count I thereof, and they are convicted.

The Court will now, after consulting with counsel, consider and fix a future date for the imposition of judgment and sentence. That is the occasion when much of the argument made here today will be again considered, namely, the extent of the responsibility and the relative parts played by the various defendants and the relative importance thereof in respect to this matter. The Court intends to have that argument in mind on that future occasion, and it is on that occasion when the policy of the law which Congress has fixed and this Court has no right to fix may properly be applied to the facts and evidence in this case as it concerns each one of these defendants separately.

I wish it were possible for all the witnesses to be here on that future date. I am not requiring it but I wish it were possible. The Court may wish to make some remarks then that they may want to hear. They may not wish to hear them, but it might be worthwhile for them.

Mr. Spiller: Do I understand the Court to say he [364] wishes the witnesses here?

The Court: I had in mind the prosecuting witnesses in particular.

Mr. Spiller: If the Court please, may I at this time on behalf of Mr. Toulouse and myself and on behalf of these defendants request that the Court make a special finding with respect to the elements of conspiracy as proven against each of these individual defendants? That is in accordance with Rule 23 of the Rules of Criminal Procedure.

The Court: The Court cannot tell you whether the Court will make the finding unless the Court first sees the finding you request the Court to make.

Mr. Spiller: May time for that be set?

The Court: I intend to settle everything on the future date to be named.

Mr. Spiller: That is satisfactory.

The Court: Every possible question is what I intend to settle on that date, and I am not saying the Court will adopt the form of finding you request the Court to make, but I am saying the Court will consider it on that date.

What have counsel to say about the need of pre-sentence investigation and report in respect to any one or all of these defendants? [365]

Mr. Toulouse: I don't think there is any necessity with respect to at least two of the defendants, and with respect to the one——

The Court: I imagine counsel will be able to tell the Court anything about the responsibilities of the defendants in connection with their past court experience, and I do not think a probation investigation is necessary for that. Counsel themselves can tell the Court about any experiences that the defendants may have had previously with the law.

Mr. Spiller: We can do that.

The Court: What is the Government's attitude, Mr. Harris?

Mr. Harris: I will be governed by the attitude of Mr. Spiller and Mr. Toulouse, your Honor.

The Court: The Court dispenses with a probation investigation and report expressly in this case

and directs that none be made. I believe that is not necessary, but I wish every one to know that I think counsel in the case can by consulting with law officers in the community and the records sufficiently advise the Court of any record as to law enforcement or law violation that may pertain to each defendant. The Court will depend upon counsel to advise the Court along that line.

Is there any reason why counsel and the [366] defendants cannot be here on May 10 at 9:30 o'clock in the forenoon? That is Monday.

Mr. Harris: It is agreeable with the Government, your Honor.

The Court: This matter is now continued until May 10, that being Monday, at 9:30 o'clock in the forenoon for all purposes including the disposition of any and every legal question that may then be involved or pending and for the purpose of imposing the judgment and sentence of the Court.

Is there any reason why the defendants should not continue on their present bonds until then or until the further order of the Court?

Mr. Harris: No, your Honor.

The Court: I wish each defendant would be ready at that time to perform the judgment and sentence of the Court as the Court may then require. It is necessary that each defendant with his counsel be present at that time, also the Government counsel.

The Court is now adjourned.

(At 4:40 o'clock p.m., Friday, April 23, 1954, proceedings recessed until 9:30 o'clock a.m., Monday, May 10, 1954.) [367]

Certificate

I, Frances I. Gilligan, do hereby certify that I am official court reporter for the above-entitled court, and as such was in attendance upon the hearing of the foregoing matter.

I further certify that the above transcript is a true and correct record of the matters as therein set forth.

/s/ FRANCES I. GILLIGAN,
Official Court Reporter.

[Endorsed]: Filed May 11, 1954.

In the District Court of the United States for the
Western District of Washington, Northern Division

No. 48570

UNITED STATES OF AMERICA,
Plaintiff,

vs.

PETER DESIMONE, JOHN STEPICH, HAR-
OLD HOPKINS, RUSSELL W. FELTON,
and BERT DePIERRIS,

Defendants.

IMPOSITION OF JUDGMENT
AND SENTENCE

This Matter having come on for the imposition of judgment and sentence before the Honorable John C. Bowen, Judge of the above-entitled Court, on Monday, May 17, 1954; plaintiff appearing by its

attorney, Richard D. Harris, Assistant United States Attorney; defendants appearing in person and by their attorneys, George J. Toulouse, Jr., and John Spiller, the following occurred:

The Court: Are counsel ready to proceed in Cause No. 48570 entitled "United States of America, Plaintiff, vs. Peter Desimone, John Stepich, Harold Hopkins, Russell W. Felton, Bert DePierri, Defendants"? [1*]

Mr. Harris: Yes, your Honor.

Mr. Toulouse: Yes, your Honor.

The Court: Will each and all of them now come forward with their counsel?

(Defendants, their counsel and plaintiff's counsel come forward.)

The Court: I wish Mr. Desimone first on my left and then Mr. Stepich, Mr. Hopkins, Mr. Felton and Mr. DePierris in that order. Are each and all of those defendants now in person before the Court?

Mr. Desimone: Yes.

Mr. Stepich: Yes.

Mr. Hopkins: Yes.

Mr. Felton: Yes.

Mr. DePierris: Yes.

The Court: And they are represented by their counsel, Mr. Toulouse and Mr. Spiller, who are also present?

Mr. Spiller: That is correct, your Honor.

Mr. Toulouse: Yes, your Honor.

The Court: Government counsel is also present.

*Page numbering appearing at foot of page of original Reporter's Transcript of Record.

Mr. Harris: Yes, your Honor.

The Court: I might also suggest that if any members of the families of any of these defendants are present I would welcome your taking seats here in the [2] jury box where you may hear better and also participate in the hearing if you wish to do that. I also would like to suggest if there is any witness in this case who appeared either for the Government or the defendants or any one of them who is present, I would like you to come forward where you can hear what is said and done in this case.

Mr. Spiller: If the Court please, so that there may be no misunderstanding, I am not certain that all of the people in the jury box are relatives.

The Court: Or friends if they wish to be present.

Now, I would like the Assistant United States Attorney, Mr. Harris, to remind the Court of what the Government contends is the maximum penalty of the law provided in this case.

Mr. Harris: As to each, a fine of not more than Ten Thousand Dollars or imprisonment for not more than five years or both.

The Court: Is that the understanding of defendants' counsel?

Mr. Toulouse: That is correct.

Mr. Spiller: That is correct.

The Court: My understanding is that this has come on now before the Court for the purpose of imposing [3] the judgment and sentence in this case as to each one of the defendants in pursuance of the Court's previous decision and finding of con-

viction and guilt as to each defendant in this case, is that your understanding?

Mr. Harris: Yes, your Honor.

Mr. Toulouse: That is correct.

The Court: Is there any reason why the Court should not do that at this time?

Mr. Harris: The Government knows of no reason.

The Court: What facts does the Government wish the Court to consider?

Mr. Harris: Your Honor, I am assuming that we all have a recollection of what transpired at the trial. I would like only to add to that very briefly that from the investigation conducted by the Federal Alcohol Tax unit, which in part was an investigation coupled with the State of Washington Tax Department and Alcohol Tax Department, that the investigation disclosed that Peter Desimone was the primary and motivating factor in this whole matter; that he was the core, the brains; and that the whole set up all originated and commenced with his undertaking, and with his discontinuance of the matter the whole thing then came to an end; but that he was the primary and motivating factor; that the defendants Stepich and Hopkins had knowledge of what was going on but [4] did not in any way in any degree measure up with what Peter Desimone himself actually did. We believe that he reaped all the profit or most of the profit that was able to be made out there. That the two defendants, Felton and DePierris, while they knew what was going on, were in no way, other than their salary and tips, if

any, benefitted by this operation. Their activity in the conspiracy was more or less controlled—or their active participation in it when they were allowed to participate was controlled by Peter Desimone.

I believe, your Honor, that without going into the details that covers the matter.

The Court: Have you any knowledge from your investigation and handling of the matter as to how long a period of time was involved other than that disclosed by the evidence and whether or not there was a substantial amount of business done as result of the law-breaking or in connection with the law-breaking alleged in the indictment?

Mr. Harris: The operation continued even after the indictment period without the alcohol tax stamp. However, as to the income, the amount of income that Mr. Desimone was able to secure is not available. We have an estimation but in no way any basis for it. It operated profitably. It owned a Seventeen Thousand Dollar bar [5] installation, and based upon that, the profits certainly must have been commensurate with that outlay of cash.

The Court: Mr. Stewart, I would like to have you make a very brief statement, if you have any information on which to base it, as to the background of each one of these defendants, and, of course, that will include anything that may be favorable or unfavorable to them.

Mr. Stewart: Peter Desimone, your Honor, is 49 years of age, was born October 10, 1905, in Seattle, Washington. He is the oldest child in a family of five, being four boys and one girl. The father,

Joe Desimone, who operated and first started the Seattle Public Market was a well known figure in the City of Seattle and a well thought of person in this community.

Pete Desimone has lived in this community practically all of his life. He graduated from Queen Anne High School in 1924. After leaving school, he entered the wholesale and retail produce business along with his father at the public market.

In 1932 he became interested in the tavern business. Since then, according to reliable information we have received from businessmen and public officials, Peter Desimone entered into questionable business ventures involving the operation of clubs, taverns and "bookie [6] joints." At one time Peter Desimone was said to be quite wealthy, claiming that he made most of his money in real estate.

He is married, having married in 1925, and is the father of one daughter. His present address, as he gave it to the Probation Office, is that he resides at the Longacres Track in Renton where he works as a groom, walking horses for a local horse owner. We couldn't learn his correct address. However, we did contact his mother and the mother stated that his home was there.

In checking the police record of Peter Desimone, your Honor, it was found that on February 3, 1937, he was arrested by the Sheriff's Office in Seattle, Washington, for possessing gambling devices. At this time he paid \$25.00 costs and for malicious destruction of property; \$1.00 and costs on assault,

3rd degree; and \$200.00 in costs on possessing gambling devices.

Mr. Desimone told us he doesn't remember the first two charges, but the \$200.00 fine was paid, and it referred to slot machines he had at the Fiesta Tavern at 85th and 15th Ave. N.W.

On June 9, 1950, he was arrested by the Sheriff's Office for violation of the Steele Act and there was a \$250.00 bail posted. On June 10, 1950, he was again arrested by the Sheriff's Office for violation of the Steele [7] Act and another \$250.00 bail was posted. He stated that he thinks the bail was reduced and then forfeited. This involved the White Center Lions Club and was possession with intent to sell.

On February 5, 1952, he was arrested by the Sheriff's Office in Seattle, Washington, for the possession of liquor with intent to sell and forfeited \$125.00 bail.

On September 30, 1952, he was arrested by the Sheriff's Office, Seattle, Washington, driving while license suspended, no driver's license. This was in Judge Hanson's court in Renton, Washington, and he posted \$250.00 bail. Mr. Desimone informed us that he paid \$80.00 fine on this.

On October 7, 1952, he was arrested by the U. S. Marshal in Seattle, Washington, for violation of the Federal liquor laws, which is the current case.

On July 13, 1953, he was arrested by the Sheriff's Office, Seattle, for failure to stop at an arterial. A warrant was not served inasmuch as they could not find the defendant.

On October 28, 1953, he was arrested by the Sheriff's Office in Seattle, Washington, possession of liquor with intent to sell, selling liquor by the drink.

On December 15, 1953, in Judge Knott's court, he was [8] fined \$500.00 and costs and gave notice of appeal. On November 9, 1953, he was arrested by the Sheriff's Office, Seattle, Washington, for possession of liquor with intent to sell, sale of liquor by the drink. No disposition was shown in this case.

On November 13, 1953, he was arrested by the Sheriff's Office, Seattle, Washington, keeping and possessing slot machines in public place. This was dismissed and the law declared unconstitutional.

On December 14, 1953, he was arrested by the Sheriff's Office, Seattle, Washington, for possession of gambling devices and was fined \$100.00 in Judge Hoar's court.

He informed us that he wasn't present at the October 28, 1953, violation, "but it was my place of business and I was convicted after I returned from California." He settled the fine. The November 9, 1953, arrest involved the same case as the October 28, 1953, arrest. He stated that he never operated after October 28, 1953, and the other charges were added. He was convicted and paid the fine and costs in December, 1953.

On January 22, 1954, he was arrested by the Sheriff's Office in Seattle, Washington, for the possession of gambling equipment and running a "bookie." This was in Justice of the Peace Moore's court in White Center, [9] and for that he posted

bail of \$100.00. He stated that he paid the \$100.00 and: "That involved their taking slot machines from me which I had bought at auction from the State Tax Commission. Joe Norby and Jim Waters, Tax Commission people, sold me them. I paid \$100.00. It is all a matter of politics, strictly."

In 1937, according to Police Chief Lewis of Bremerton, who was a witness in the case, "Desimone was involved with the then mayor of Bremerton, one Jesse Knabb. Charges involved an attempt to bribe the then prosecuting attorney, Ralph Pervis, with gifts in Desimone's attempt to get in on some pin-ball deals or arrangements in Bremerton." It was understood he connived with the mayor. Desimone turned State's witness in that case and there was no action taken against him.

He has no military record, your Honor, and from the information that we received Desimone receives from his father's estate, or should receive from his father's estate, between \$5,000.00 and \$6,000.00 a year. However, we have learned from the mother that he has never had this money, and it is felt that much of that money is presently being used for paying tax liabilities and penalties and interest which he had assessed against him.

In 1944, he had a tax liability of penalties and interest in the amount of \$7,054.06. However, [10] he paid that off.

The Court: Mr. Stewart, may I interrupt you now? Were you able to find out whether or not he realized any profits out of this business out there?

Mr. Stewart: He did not realize any profits out

of the business. As a matter of fact, I don't think Pete Desimone has any money. He is out walking horses at the race track and is just trying to make a living by doing that out there.

According to the information that we received, when his daughter got married he did not even appear at the marriage of his daughter, and it was felt by many concerned that his reason for not doing so was that he did not have any money to buy a gift for the daughter at the time of her marriage and also due to the fact that he has been ashamed of himself by these arrests that he has had.

The Court: Now, as to the other defendants, did any of them make any money out of this transaction?

Mr. Stewart: No, your Honor. The only two that made any money out of the transactions were the two bartenders who made their salary.

The Court: Does any one of the other defendants have a criminal record?

Mr. Stewart: Stepich had no criminal [11] record. Mr. Hopkins has no previous criminal record.

On Felton, your Honor, it was found that he had some juvenile court record. That on May 22, 1935, he was taken into custody by the King County Juvenile Court, suspected of stealing, and he was committed to the Luther Burbank Parental School and was parolled from that school on September 6, 1936. On May 6, 1940, he was sent to the Washington State Training School at Chehalis, Washington, on a charge of auto theft and was parolled from that school after serving not quite six months.

The Court: About what age was he?

Mr. Stewart: At that time, your Honor, he was 17 years of age.

The Court: Has he been in any trouble since then before this occurred?

Mr. Stewart: Not before this occurred, and all the record he had since this occurred was working out there and selling the liquor, and it was arrests by the State Liquor Board.

The Court: Has Mr. DePierris any record?

Mr. Stewart: Yes, your Honor. It is a juvenile record. On May 14, 1934, a petition was filed, child without guardianship, both parents deceased, disregarded property rights of others. On September 19, 1934, he was [12] made a ward of the court, placed in temporary custody of foster homes, to report on probation status.

On January 29, 1936, he was placed in detention, no details given or charges placed in this detention. On March 2, 1936, he was given a suspended commitment to the Washington State Training School, Chehalis, and ordered to reside with his brother, Wesley.

Now, the only other charges he has had against him were when he has been acting in the capacity of a bartender in 1952. Then, on January 7, 1953, in Justice Court, Judge Moore, South End, domestic difficulty. A complaint was dismissed on the wife's affidavit and the costs paid by the defendant.

I might state that in the course of our investigation and from information that we received, not from either Mr. Stepich or Mr. Hopkins, and from

information received by the bank at White Center, it was learned that a petition had been circulated by the White Center Lions Club and the White Center Chamber of Commerce in behalf of Mr. Stepich. Also, at one of their regular meetings, an endorsement for Mr. Stepich was acted upon by the Eagles in the White Center district. A petition for Mr. Hopkins also was being circulated in that district, and I feel confident that these men knew nothing about it. It was circulated by somebody else from the [13] information that we received from the bank. I might state that those two petitions have been turned over to their attorneys along with the letter from the Eagles and they can present it to your Honor at that time.

The Court: We will undoubtedly have a recess in these proceedings at 12:00 o'clock until some later hour. Until then we will proceed. I will be glad to hear any statement that defendants, their counsel, or their friends wish to make which is pertinent to the case, and I wish counsel to feel the Court will have time to hear them for any reasonable statement no matter if it runs into the afternoon. The only thing is I will probably make some suggestions about trying to write up some forms as far as you can go with them during the noon hour so as to save time and to make it possible that the judgments and sentences in these cases and any orders that may be different from the judgments and sentences can be entered today. The Court must do it today. Proceed.

Mr. Toulouse: Your Honor, on behalf of all of the defendants, since the primary question before

the Court at this time—the Court under the statute is vested with the discretion of either fining these people or incarcerating them in a penitentiary. I am of the opinion that considering the nature of the offense—this [14] offense is a crime of omission. It is a statutory offense. It is not a criminal offense against nature, and it is not a crime in any sense against the rules that God has prescribed that Christian men live by. It is strictly on the same classification as a person failing to get a license. It is on the same classification as an individual that fails to comply with some statutory requirement that is contained, as your Honor knows, in some thirty or forty volumes of the Federal Code and contained in innumerable volumes of State reports.

In this particular case, it seems to me that the quality of the offense certainly with respect to this particular operation, and I say this candidly to your Honor, that a mountain has been made out of a mole hill, in my judgment, to bring an action of this nature under the conspiracy statute, making it equally applicable to a case of this character as would be applicable to a case involving murder, larceny, rape, and all the heinous felonies, and to brand these people as people of that stamp is, in my judgment, not treating the offense for what it is. The individuals in this particular case, at least four of them, are victims of circumstance, and at least one of them was certainly the victim of an honest judgment with reference to his difference of opinion with respect to State law. In one instance he reversed the [15] State law in the Supreme Court,

and in the other case it wasn't until after the case went to the Supreme Court twice that they finally came out with a 5-4 holding as to the Steele Act, whether or not that was constitutional.

The Court: Mr. Toulouse, may I hear your comments on the facts in this action?

Mr. Toulouse: Yes, I will confine myself to that. Mr. Stepich here is a man who is 42 years of age. His wife is a teacher. He has a boy 11 years old. He has had five years service in the Army. Worked in the King County Park Department for three and a half years. Past chairman of the March of Dimes, the Red Cross, the Good Neighbor Fund, past president of the White Center Commercial Club, Lions Club, past commander of the American Legion. He is the West Side chairman of the American Legion boys baseball, and he has no previous offenses. I might say to the Court that here is a petition that I received from——

The Court: Would you kindly read the substance of it?

Mr. Toulouse (Reading): "We, the undersigned members of the Lions Club and White Center Commercial Club, of which Mr. Stepich has been past commander, we at this time here affix our signatures stating that during this time Mr. Stepich has been a 100% American citizen and at [16] all times endeavored to work for the betterment of the district." Included are business and professional men who know this man. There appear in the neighborhood probably of 75 or 80 signatures, your Honor, of men in that group.

Now, with respect to Mr. Stepich, I think your Honor has the evidence in mind. In that particular matter, it is true that he was out there. It is true that he is guilty by view of the fact that he was guilty of association. There is no evidence that he committed any of the overt acts charged in the indictment. He was there. Certainly there is no evidence that he obtained anything, and, as Mr. Stewart said, I am confident that he never received any gift, never received any money, never received anything from the entire operation. Well, from the facts I have recited, it seems to me, your Honor, the nature of this particular offense as to a man of Stepich's stamp, you just couldn't have an individual of that particular stamp committing a crime against his sovereign, knowing that he is committing that type of an offense. He is certainly not the type of man this Court would not feel free to have at large or is he not a type of man who is not a credit to the society in which he lives. It seems to me that bearing in mind the only purpose of punishment, that this is a proper case for [17] your Honor to exercise judicial discretion and equity, and that true justice demands that your Honor should, in my judgment, as to the defendant Stepich either suspend a sentence or fine the individual for the offense.

Now, as to the defendant Hopkins, we have a man that has a wife and four children. He has a little baby coming along in a couple of weeks. He is the past president of the Lions Club and he operated his own restaurant in the White Center area for a number of years. He now works at the Reliable

Fish Market. He is well thought of in his entire community. He has no past record at all. His connection with the offense is the same as that of Stepich, as Mr. Stewart has said, and I am confident that Mr. Hopkins never received one penny by way of gift, money, salary or otherwise. He was there. I likewise have a petition that was——

The Court: Will you let me have the benefit of the substance of it?

Mr. Toulouse: Yes, your Honor. It apparently was received by Mr. Stewart. Anyway, it says:

“We, the undersigned business men of White Center Business District of our own free will respectfully submit this testimony in behalf of Harold Hopkins and urge it be given consideration. Harold Hopkins is and has been [18] for several years a substantial businessman in our district. He is well liked and highly respected. He is a tireless worker in community enterprises and unselfishly devotes his time and energy to helping others through the local Lions Club and other groups. We are in no way attempting to prove or disapprove any connection he may have had with the White Center Athletic Club. We are interested in having the Court know that as fellow businessmen we regard Harold Hopkins as a good citizen.”

To my mind the fact that those businessmen would put their signatures on that type of a statement speaks far more eloquently than any words I might possibly have to say at this time. The most I can say is that certainly considering the nature of

the offense and Hopkins' connection with the offense and the stamp of the man as demonstrated by his entire life as demonstrated by the confidence of these individuals in him that even the most sincere advocates of incarceration would not advocate it would be in the interests of the United States or in the interests of society as a whole to incarcerate this man. I certainly think a fine as stated by the statute where your Honor is given a disjunctive discretion, that a fine should certainly operate as a deterrent and give [19] this man a real opportunity to rehabilitate himself.

Now, as to the defendant Bert DePierris, you heard his only offenses. Mr. Stewart has indicated to the Court something. Mr. DePierris is now 35 years old, and so when these things occurred, he must have been about 15 and he became a ward of the Court. I am not going into that but obviously the circumstances at that particular age were a juvenile problem. It certainly should have no influence upon the Court at this time in view of the fact that there is no evidence of his commission of any type of an offense involving intent or of a moral nature or that would be mala in se.

The Court: Did he receive any punishment in the State Court on account of this offense?

Mr. Toulouse: Yes. In that connection, he paid a fine in the State Court in connection with being picked up for selling whiskey out there. If your Honor recalls his testimony, he testified that later in May, right after Mr. Daggett was out there, Mr. Felton and Mr. DePierris quit. They have been

elsewhere employed, and that is two whole years ago, and since the time of the indictment they have been prompt in coming to Court. They have been prompt in giving their probation reports. They have been in attendance in this Court, as it were, for two years, and Mr. DePierris has paid his fine [20] under the Steele Act. Since that time his conduct has been good. He has not been employed in any establishment even remotely dealing with spiritous liquors. He has been longshoring for a living, and his wife and his daughter are right here in town. It seems to me it would be a crying shame in light of the fact that this man could not possibly—he didn't know anybody until January, 1952, and he works there for six months, and I think the showing is he worked there part time, and he made altogether in salary some \$700.00 or \$800.00, I think it was.

Mr. Felton, to come to him, he is a young man, 30 years old. He has two children, one 6 and one 11. They are both boys. His wife and he live here in town. He has never been in any trouble since the time that he was picked up involving the Steele Act, and he paid his fine in both instances under the Steele Act. Since then, some two years ago, his conduct has been impeccable.

His juvenile record, I am not going to make any further comment on that. I think the Court realizes at that time, from the Court's question, that he was just a boy, and that type of offense has not been in any way reproduced in the last 19 years, I believe it is, if I add right, so certainly there is no

indication that Mr. Felton has not lived as a man of good character other than this [21] particular Steele Act violation.

Now, as to both of these bartenders, there is one pertinent comment that I would like to make. It is true, your Honor, that they did sell whiskey. It is true, however, in the economic scheme of things that we presently have, if a person is an employee and the obligation was that of the establishment to have this stamp, any bartender in the State of Washington might very well be in the same position because his employer perhaps failed to get a stamp.

The Court: I will have to interrupt you here. Can you be back at 1:15?

(All parties nod assent.)

The Court: In the meantime, if you can get started on any part of the typewriting work that might be of convenience in the case, I wish you would try to do that and try to make arrangements in this particular case to have necessary typographical assistance until the job is completed on this day. The Court is recessed until 1:15 o'clock this afternoon, at which time we will resume this hearing.

(Whereupon the Court recessed at 12:00 o'clock noon and reconvened at 1:15 p.m., at which time the following occurred.)

The Court: I wish to resume the hearing in [22] Cause No. 48570. May the record show that all counsel are present and all parties are present and represented?

Mr. Harris: Yes, your Honor.

Mr. Spiller: Yes, sir.

The Court: You may proceed, Mr. Toulouse, with your statement.

Mr. Toulouse: Your Honor, I have fairly well completed my remarks with respect to Mr. Felton, Mr. Stepich, Mr. DePierris and Mr. Hopkins. I would now like to say something with respect to Mr. Desimone. As related by Mr. Stewart and as I recast the facts as I know them to be, the Court has before it in Mr. Desimone a man who comes of a good family, who is now 49 years old. I think the report will further disclose, although Mr. Stewart has not alluded to it, that Mr. Desimone is not a well man. He is a man that has a heart condition. I think he has some background of diabetis. So here we have a man that is well beyond the middle span.

The Court: If he feels ill at this time, be sure to let him sit down.

Mr. Toulouse: Oh, I will, your Honor. We have a man that is married, who has had the one wife, one child. It is not alluded to but apparently Mr. Stewart has stated what a fine family he comes from. It might also be stated that his child is certainly a credit to [23] society. She is a girl who graduated with honors from the University. It might also be said if we viewed Mr. Desimone's life from 1935 or 1936, taken as a whole, it is a picture of a man come from a good Italian family; that for some reason or other he is like the strayed or lost sheep. He has strayed in this sense of the word—that he has found himself in a business, the tavern business, which was a circumstance—and I say a circumstance advisedly—from which all these pro-

ceedings and other proceedings have flowed. In short, it was the occasion that brought about the offenses that he has committed against the law, all more or less having to do with operating a tavern or operating a business that had pin ball machines or being connected with a business that bought or sold spiritous liquor.

Now, I say this to your Honor, that in this country as it exists today under the law, since the passage of the 18th Amendment, apparently buying and selling, storing or drinking whisky is condoned by the Legislature of the United States. Men like Mr. Desimone got into the business and they, I might say, must have become involved in politics one way or the other. I think the evidence shows that ultimately Mr. Desimone's enterprise out here was taken over by the Brooks Realty Company in a foreclosure proceeding in King County. [24]

Mr. Desimone right now is a man that is crowding 50 years old. He is ashamed of the fact that he spent the larger portion of his life trying to maintain himself in a position in society by running this type of business; that he got himself involved with real estate men, politicians, perhaps others, that put him where he is now—walking horses out on the race track for a living, cooling them off as it were. I am convinced that had this same man stayed within the fold of his family and the business that he knows something about, running or helping to run the public market, that he wouldn't be before this Court today.

It is the occasion of sin that brings about sin.

It is the occasion or the circumstance of being connected with taverns, pinball machines, etc., and perhaps that has brought about the position that he finds himself in before this Court today.

The Court will note from his record, and I say this advisedly, that there is nothing in his record that speaks of any type of a crime of a moral nature, and that interests me. In other words, there is not one word in that entire record, which involves a lot of offenses of omission primarily, that indicates that the man ever had an amoral bent.

I could say that amongst many he has been [25] regarded when he had money as generous, as kind, and as charitable. There are many in this community that have profited, from boys clubs on down, by reason of his goodness of heart and his charity. I think that if the Court, consonant with its obligation to have people respect the laws of the United States and comply with them, could find it within its heart and within the ambit of clemency, which I consider to be the greatest of all judicial virtues, to send this man back into the bosom of his family, perhaps under some sort of a suspended sentence or probation to his brother who is here in Court today, I think this Court should do so. I think that under those circumstances the occasion of this man's offenses has been removed. Time has removed them. Time sometimes cures all ills. He no longer has any gambling machines, and as your Honor knows they are expensive things. He no longer has any money. He no longer has any business. He no longer has any taverns, and he hasn't had them for some pe-

riod of time. Almost two years have elapsed since he was indicted on the particular offense in question. He has stayed in attendance on this Court. He has certainly been faithful, from the standpoint that he can be faithful, to incur the respect of men such as Mr. Stepich, Mr. Hopkins, Mr. Felton and Mr. DePierris, that is honorably he has stood up to the position that it was his duty [26] as a man to say it was his individual responsibility and not theirs that brought about the circumstances in which they find themselves. Certainly there is not too much to say of a man who can face up to an obligation to his fellow men. That likewise is a tribute to a virtue that inheres in Mr. Desimone. I can't think of any greater virtue that a man can have than to be frank, honest, and candid beside those people that he feels obligated to, that he has placed in a position of jeopardy, and to be honest about it. It is a virtue that I admire.

I repeat that I think that this Court could in justice and in clemency permit Mr. Desimone to be restored to the bosom of his family under some sort of a probationary arrangement. He has no funds to speak of. Perhaps some sort of a fine which could be paid over a period of time might be worked out to insure his good conduct and his respect for the law. I do think that it would be a sin and a shame not to permit this strayed sheep to be given an opportunity to rehabilitate himself. He stayed within that framework as I say for almost two years.

It is too much to expect that all of these defendants since they have conducted themselves as this

Court might very well believe from all of the evidence [27] and from Mr. Stewart's report, in a manner that is consonant with the spirit of real citizenship, is it too much to expect that on a probationary sentence of some sort that all five of these men would not continue to do so? In my judgment, the best interests of the United States would be subserved by certainly compensating the United States to the extent of the expense it has been put to in this matter; that the interests of society are best subserved by permitting these men, who are not malefactors from the standpoint of moral considerations, to be restored to the bosoms of their families; and that some sort of a suspended sentence would be all that the law should require until one or more of them might evidence an amoral tendency of some sort or other.

I respectfully plead to the Court for clemency for these five men, and in doing so, I am speaking from my heart, not necessarily logically but from the depths of my heart. That is all, your Honor.

The Court: Mr. Spiller, do you wish to say something?

Mr. Spiller: I don't think I can add anything to what Mr. Toulouse has said, if the Court please.

The Court: I wish each of the defendants to know the Court would welcome anything you may wish to say, and I want to remind you that so far as I know [28] this will be the last opportunity we will have to discuss your cases together. This Court does not receive private communications about cases before or after trial, and I wish you to have that in

mind and to know that the Court will welcome any statements you may wish to make; if you ever will wish to make any statements, I want to hear them now, because this is the time when the Court earnestly will consider anything that any one of you may wish to say. Also, if any member of your family might wish to make a statement, I will likewise earnestly consider any such statement.

Mr. Desimone?

Mr. Richard Desimone: I am Richard Desimone, Pete's brother. Our family knows that Pete has strayed and hasn't been a leading citizen of Seattle, but we also feel that he hasn't committed a big crime or a crime against society that would prohibit him from becoming a useful citizen again. The family would like to welcome him back, and we stand ready to help him financially or any other way possible.

The Court: Does any one else wish to make any statement for any one of the defendants? I will hear from Mr. Peter Desimone now if he wishes to make any statement in his own behalf.

Mr. Peter Desimone: I have nothing to say. [29]

The Court: Any one else?

Mr. Stepich: I have never knowingly, wilfully, or intentionally tried to conspire against the United States Government. I have a wife and family and a business. I know you judge me as it is. I would appreciate your consideration. Thank you, very much.

The Court: Mr. Hopkins, did you wish to say anything?

Mr. Hopkins: Your Honor, I am in accord with

Mr. Stepich. I did not intentionally or any other way try to defraud the Government, and I leave it at your mercy, sir.

The Court: Mr. Felton?

Mr. Felton: No, sir.

The Court: Mr. DePierris?

Mr. DePierris: No, sir.

The Court: Is there any member of the family or a friend or relative of any one of the defendants who might wish to make a statement?

(No answer.)

The Court: It is the judgment **and** sentence of the Court that you and each of you, the defendants, Peter Desimone, John Stepich, Harold Hopkins, Russell W. Felton and Bert DePierris are guilty as charged in Count I of this indictment against you, that being the only count [30] in the indictment, and that in respect to that count each of you is convicted.

It is the further judgment and sentence of the Court that you, the defendant, Peter Desimone, be committed to the custody of the Attorney General of the United States for confinement in the United States Penitentiary at McNeil Island or such other like institution as the Attorney General or his authorized representative may by law designate for the period of eighteen months. There will be no fine in connection with Mr. Desimone's sentence.

What the Court has just said and what the Court will say as to the sentence as to each defendant is to be related to Count I, that being the only count in

the indictment. I wish the written form of the judgment and sentence to so show.

It is the the judgment and sentence of the Court that you, the defendant, John Stepich, be committed to the Custody of the Attorney General of the United States for confinement in the King County Jail or such other like institution as the Attorney General or his authorized representative may by law designate for the period of fifteen days and, further, that you pay a fine to the United States in the sum of Fifteen Hundred Dollars and stand committed until that fine is paid. [31]

It is the judgment and sentence of the Court that you, the defendant, Harold Hopkins, be committed to the custody of the Attorney General of the United States for confinement in the King County Jail or such other like institution as the Attorney General of the United States may by law designate for the period of fifteen days and, further, that you pay a fine to the United States in the sum of Twelve Hundred Dollars and stand committed until that fine is paid.

As to the defendant, Russell W. Felton, it is the judgment and sentence of the Court that you be committed to the custody of the Attorney General of the United States for confinement in the King County Jail or such other like institution as the Attorney General of the United States or his lawfully appointed representative may by law designate for the period of thirty days, provided, however, that execution of this sentence be suspended and the defendant be placed on probation for the period of

one year, upon the conditions that during that time you do not violate any law of the United States or of any state or community where you may be; that you do not unlawfully possess, handle or dispose of any sort of intoxicating liquors; that you comply with all the terms and conditions of the United States statute relating to probation and make reports to the [32] probation officer as required by him.

As to the defendant, Bert DePierris, it is the judgment and sentence of the Court that you, the said defendant, be committed to the custody of the Attorney General of the United States for confinement in the King County Jail or such other like institution as the Attorney General or his authorized representative may by law designate for the period of sixty days, provided, however, that the execution of this sentence shall be suspended and you be placed on probation for the period of two years upon the conditions that you, during that time, do not break any laws of the United States or of any state or community where you may be; that you do not unlawfully possess, handle or dispose of intoxicating liquors in any form; and that you further comply with all the terms and conditions of the United States statute relating to probation and make reports to the probation officer as required by him.

Is there any issue in this case not now disposed of by the orally announced judgment and sentence of the Court and by the other rulings preceding such oral announcement?

Mr. Toulouse: Your Honor, there is one thing. On this fine of \$1,500.00, I am not quite clear on Mr. Stepich and Mr. Hopkins, their fines, is your Honor going [33] to fix a time within which that would have to be paid?

The Court: I wish it paid right away. It will have to be paid and thereafter the Court's approval should be obtained before they are released from the Marshal's custody.

Are there any other matters now?

Mr. Spiller: May I make a request of the Court in this connection? Would it be possible to talk with these defendants for a few moments in the Attorneys' Room before they are taken into custody?

The Court: No. That request is denied. You may discuss any matters with them after they are taken into custody.

How much time will you need, Mr. Harris?

Mr. Harris: I would assume by 3:00 or 3:15 we might very well have all these completed by then.

The Court: I think that is a little bit early, Mr. Harris. I think the Court should excuse counsel until 4:00 o'clock, and the Court will do that.

I want to discuss one point with counsel and these defendants about the matter of paying the fine. The Court would have no objections, if they can make some reasonable assurances and arrangements, to their paying of their fines within six months. I have no objection to the giving of six months' time within which to [34] pay the fines.

Mr. Harris: I have no objection either, your Honor.

The Court: Then I wish you would state that. If at any time before the termination of execution by the defendant, Mr. Stepich, and the defendant, Mr. Hopkins, they appear in Court and make reasonable assurances then and there to the Court that they can pay the fine within six months, thereupon the Court will modify this sentence as to the requirement that they stand committed until the fine is paid. Pending their appearance and explanation satisfactory to the Court, they will be subject to the order to stand committed until the fine is paid.

Mr. Harris: Does your Honor wish that language incorporated in the judgment itself?

The Court: I doubt the necessity of it, but I will say to them orally the Court will consider modifying the sentence to that extent if they will do that.

Mr. Toulouse: That is understood, your Honor.

The Court: The written form of the judgment and sentence will not have that explanation or that detail, but I say on the record if, before the time is ended during which they are required to serve a sentence, they appear in Court—and I ask the Marshal to assist [35] them in appearing in Court—and can assure the Court in some reasonable way of an arrangement to pay the fines within six months thereafter, the Court will approve of a modification and will modify the written form of the judgment and sentence so as to permit them to do that.

Mr. Toulouse: Your Honor, I have one more question. I have advised the defendants with re-

spect to the law relating to appeals to the Ninth Circuit Court of Appeals, and I was wondering what your Honor's attitude is with respect to the period. There is a ten-day period apparently in which to give notice of appeal. Would your Honor permit these individuals to be at large during that ten-day period?

The Court: No. The order now is that each of the defendants as to whom no suspension of execution was ordered be now remanded to the Marshal for delivery into the custody of the Attorney General for execution of sentence. I think there is a rule that would apply to the situation about their intentions, certain intentions to appeal. If they give notice of appeal, the Court will upon request thereafter, but not until then, discuss the matter of supersedeas and appeal bond.

Is there anything else in this connection? Then the defendants Desimone, Stepich and Hopkins are [36] now remanded to the Marshal for delivery into the custody of the Attorney General for execution of sentence. The defendants Felton and De Pierris will be subject to suspension of execution upon the conditions stated, and they are not remanded. They are excused until 4:00 o'clock. Likewise those who are remanded are excused until 4:00 o'clock. All counsel are excused until 4:00 o'clock. It is necessary that all counsel be present as well as all defendants at that time. They may now be excused.

(At this time proceedings were recessed until 4:00 o'clock p.m. this day, at which time the following occurred.)

The Court: You may proceed now, Mr. Harris.

Mr. Harris: Yes, your Honor.

The Court: Counsel, will you have the defendants in the Desimone case all come forward?

(All counsel and all defendants come forward.)

Mr. Harris: For your Honor's consideration, I am first submitting to the Court the judgment and sentence as applied to Peter Desimone.

The Court: Have counsel had a chance to look this over?

Mr. Toulouse: We have, your Honor.

Mr. Spiller: Yes, your Honor. [37]

The Court: Do you see any errors or omissions in it?

Mr. Spiller: We have noticed none, your Honor.

Mr. Toulouse: We find none.

The Court: Does anyone know of any legal reason or any other reason that amounts to a legal reason why these judgments and sentences should not be entered now in their written form?

Having in mind what has already been heard and said and considered, and not hearing anything to the contrary now, the Court does order that this judgment and sentence and order of commitment as to the defendant Peter Desimone be now entered and that defendant, in accordance therewith, be remanded to the Marshal for delivery into the custody of the Attorney General for execution of sentence.

Mr. Harris: Now, handing you the judgment in reference to John Stepich——

The Court: Are there any errors or omissions in that?

Mr. Toulouse: None, your Honor.

Mr. Spiller: None, your Honor.

The Court: I have put a stroke below the first two letters in the word "stand" at the end of line 5 on the second page. There was an [38] unintentional spacing between the two letters. This will indicate drawing them together in the same word.

Mr. Spiller: No objection to that, your Honor.

The Court: In that case as to the defendant John Stepich, let this judgment and sentence and order of commitment in written form be now entered and the defendant remanded to the Marshal for delivery into the custody of the Attorney General for execution of sentence.

Mr. Harris: Handing to the Court for its consideration the judgment and sentence for Harold Hopkins—

The Court: In that case, as to the defendant Harold Hopkins, let the judgment and sentence in written form carrying into effect the Court's previous oral ruling be now entered, whereby that defendant is remanded to the marshal for delivery into the custody of the Attorney General for execution of sentence.

Mr. Harris: At this time I hand the Court for its consideration the judgment and sentence of Russell W. Felton. I would like to call to your Honor's attention that on page 2, line 8, we have inserted the word "any" after the word "in" and before the word "form."

The Court: Does anyone have any doubt that “any form” relates to the intoxicating liquor?

Mr. Spiller: Well, I just want to be sure that the word “unlawfully” is before that. Yes, I think it is. [39] I think that is all right.

The Court: Has anyone any objection as to the length of the probationary period of one year? Does anyone conceive of any illegality in that period?

Mr. Spiller: I know of none, if the Court please.

The Court: Hearing none, this judgment, sentence, order of suspension of execution thereof, and order of probation will now be entered, and the defendant, in pursuance thereof, is now discharged from the Marshal’s custody upon the terms and conditions of said order of probation and order of suspension of execution of sentence. The defendant Russell W. Felton’s bond is discharged and his bondsman exonerated, and he may go hence without *day* subject, however, to the conditions of that probation order and suspension of execution order.

Mr. Harris: Now handing to the Court for its consideration the judgment, sentence and order of probation of the defendant Bert DePierris——

The Court: Has anyone any legal or factual objection to the period of two years as the proper and legal period of probation in this case as to this defendant?

Mr. Toulouse: I know of none. [40]

Mr. Spiller: I know of none.

Mr. Harris: No, sir.

The Court: In this case, subject to the terms

and conditions of the order of suspension of execution of sentence and order of probation, let this judgment, sentence and order of probation be entered and the defendant is discharged from the Marshal's custody and his bond and bondsman are discharged.

Now, is there anything else as to any other thing in this case at this time?

Mr. Harris: No, your Honor.

Mr. Spiller: If the Court please, may I give a notice of appeal on behalf of all of the defendants? I would like to serve Mr. Harris, as United States Attorney, with a copy of that, and I would like to ask the Court, if you will, to fix an amount of bond by way of supersedeas or otherwise, pending the filing and completion of the appeal.

The Court: Mr. Harris, are you prepared to respond as to what the Government thinks the amount should be of the bond?

Mr. Harris: Yes. I think at this time that the Government would not oppose a bond in the amount—as to some of the defendants it would have to vary.

The Court: Do counsel wish to have a short [41] conference and then advise the Court?

Mr. Toulouse: Thank you, your Honor.

Mr. Spiller: Thank you, your Honor.

The Court: Very well. Counsel and the defendants may step aside temporarily.

Do you wish the notice of appeal to be now filed?

Mr. Spiller: Yes.

The Court: It will be filed.

(Recess.)

The Court: Are you ready to proceed?

Mr. Harris: Yes, your Honor.

The Court: What would you like to say about the bond, gentlemen?

Mr. Harris: Possibly I should speak first. My understanding is that the defendants prior to the trial and prior to the sentence today were on bond in the amount of \$500.00. The Government would take this position, in view of the sentences imposed, that the bond should not be substantially increased except as far as the defendant Peter Desimone is concerned, and the Government would recommend an amount in the proximate sum of \$2500.00.

The Court: Would other counsel like to make a statement?

Mr. Toulouse: The only remark I would make in [42] that regard, your Honor, is that Mr. Desimone has been in attendance upon this Court for a period of two years on a \$500.00 bond. Considering the circumstances of the case and in the light of what Mr. Harris has said, there certainly would be no reason for this Court increasing the bond beyond \$1,000.00 in my judgment. Mr. Desimone's family ties are here. He has been in attendance upon this Court for nearly two years. There is no reason for the Court to believe that he wouldn't respond.

The Court: Sometimes it changes one's attitude in respect to those considerations you are mention-

ing when the impact of the final disposition of the case comes.

Do you wish to say something, Mr. Spiller?

Mr. Spiller: No. I think not.

The Court: I believe, considering the cost of the bond and all that has been said on this occasion, also during the trial and before the trial, the Court ought to fix the bond in the sum of \$2,000.00 as to the defendant Desimone, and that is the order of the Court, \$2,000.00 bond, surety or cash—that is commercial surety or cash bond.

As to the others, the Court will not make any ruling increasing the bond in view of the fact that the Government does not request it. [43]

Mr. Harris: The present bond will not suffice, though, as I understand it, and a new bond will have to be issued.

The Court: There is no question in my mind about that. There will have to be a new bond in each case.

Mr. Spiller: May I ask one question? Does the Court fix the bond at \$500.00, also, for the two men as to whom there was a suspension and probation?

The Court: If it is requested that a bond be fixed, the answer, of course, is yes.

Mr. Spiller: Is there a request for a bond for them in view of the fact——

The Court: Yes. The Court makes that order whether there is a request for it or not and under the same conditions. It will be either a commercial surety bond or a cash bond in each instance, and as to the defendants Stepich, Hopkins, Felton and

DePierris, the amount of the appeal bond is fixed in the sum of \$500.00.

Unless there is something to the contrary, my understanding at this time is that the United States Commissioner has authority to approve appeal bonds, is that true?

Mr. Harris: That is my understanding.

The Court: If counsel will show the Court [44] some different authority, I will consider what counsel may say, but I wish the Commissioner to attend to all bond approving unless there is some reason why he should not.

Is there anything else to be said?

Mr. Harris: We have this problem, your Honor—and frankly I can't answer the Marshal—as to Felton and DePierris. In view of the fact that they have filed notice of appeal and your Honor set the bond at \$500.00 they are remanded to the custody of the Marshal until they have posted that bond. At least that is my understanding.

The Court: They cannot just stay out if they are dissatisfied with it. They ought to be remanded.

Mr. Harris: That is correct.

The Court: In view of the notice of appeal each of the defendants, including Felton and DePierris, is remanded to the Marshal.

The Court is now adjourned until tomorrow morning at 10:00 o'clock.

(At this time there was a short recess, after which the following occurred.)

Mr. Spiller: May I say to the Court that Mr. DePierris and Mr. Felton have asked counsel

whether they could withdraw their appeal in view of the remanding into custody? [45]

The Court: Will they come forward and will counsel for them and Government counsel come forward?

(All counsel and the defendants Felton and DePierris come forward.)

The Court: Mr. Harris, do you know how to effectually withdraw an appeal after a notice of appeal has been given?

Mr. Harris: I understand, your Honor, that the notice of appeal has not been completed as yet because of not having paid the \$5.00 filing fee. I have had this occur before. It has not been docketed.

The Court: I understand this has not been docketed here.

Mr. Spiller: That is what I understand.

The Court: Then there is nothing to keep the Court from ordering its return from the files and that the Clerk not docket it.

Mr. Harris: I wouldn't think so, your Honor.

The Court: I ask, Mr. DePierris, if you wish to withdraw your notice of appeal in this case as counsel has said you do?

Mr. DePierris: Yes, sir.

The Court: Do you wish to withdraw this notice so far as it concerns you and destroy it as having no effect? [46]

Mr. DePierris: Yes, sir.

The Court: I ask Mr. Felton, having heard what your counsel has said, did he correctly represent your wishes?

Mr. Felton: Yes, sir, he did.

The Court: And do you wish to withdraw this notice of appeal and to destroy it and to treat it as having no effect whatsoever?

Mr. Felton: Yes, sir.

The Court: Is this the voluntary wish of Mr. DePierris and Mr. Felton?

Mr. DePierris: Yes, sir.

Mr. Felton: Yes, sir.

The Court: In view of the fact that it has not been docketed and no fee has been paid to the Clerk here, is there any objection on the part of counsel?

Mr. Harris: No, your Honor.

Mr. Toulouse: No objection.

Mr. Spiller: No objection.

The Court: Very well. It will be done, and, Mr. Clerk, will you destroy that now?

Mr. Harris: I understand from Mr. Toulouse he would like to make a change, your Honor, which I believe would be in conformity with their thoughts.

The Court: Let Mr. Toulouse do that then, [47] and will counsel be present, Mr. Harris?

Mr. Harris: Yes, your Honor.

The Court: I think you should eliminate these two persons in the caption of the case, these two defendants, if that is their wish and I understand it to be their wish, the two persons DePierris and Felton.

Mr. Toulouse: I have done so now, your Honor.

The Court: Will all counsel initial that?

(All counsel write on document.)

The Court: This now may be accepted and filed and proceeded with as a notice of appeal on behalf of the defendants Peter Desimone, John Stepich and Harold Hopkins, and only on their behalf, and not as a notice of appeal on behalf of the defendants Felton and DePierris; is that the understanding of all?

Mr. Toulouse: Yes.

The Court: Then the defendants Felton and De Pierris are discharged as the Court previously, in the first instance, stated. What the Court said later to the contrary is set aside and is held for naught in view of what has later transpired.

You may step aside. The Court then is again adjourned.

(Whereupon the Court adjourned at 5:10 p.m. Monday, May 17, 1954.) [48]

Certificate

I, Frances I. Gilligan, do hereby certify that I am official court reporter for the above-entitled court, and as such was in attendance upon the hearing of the foregoing matter.

I further certify that the above transcript is a true and correct record of the matters as therein set forth.

/s/ FRANCES I. GILLIGAN.

[Endorsed]: Filed June 4, 1954.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK, U. S. DISTRICT
COURT, TO RECORD ON APPEAL

United States of America,
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington, do hereby certify that pursuant to the provisions of subdivision 1 of Rule 10 of the United States Court of Appeals for the Ninth Circuit, and Rule 39 (b) (1) of the Federal Rules of Criminal Procedure, I am transmitting herewith all of the original papers in the file dealing with the above-entitled action, excluding exhibits, and that said papers constitute the record on appeal of defendants Peter Desimone, John Stepich and Harold Hopkins from the judgments and sentences filed May 17, 1954, to the United States Court of Appeals for the Ninth Circuit, said papers being identified as follows:

1. Indictment, filed Sept. 26, 1952.
2. Marshal's Return on Bench Warrant, Desimone, filed 10-7-52.
3. Marshal's Return on Bench Warrant, Hopkins, filed 10-7-52.
4. Marshal's Return on Bench Warrant, Stepich, filed 10-7-52.
5. Bail Bond, Deft. Desimone (Nat. Auto. & Cas. Ins. Co.), filed 10-7-52.

6. Bail Bond, Deft. Stepich (Nat. Auto. & Cas. Ins. Co.), filed 10-7-52.
7. Bail Bond, Deft. Hopkins (Nat. Auto. & Cas. Ins. Co.), filed 10-7-52.
8. Marshal's Return on Bench Warrant, Felton, filed 10-10-52.
9. Bail Bond, Deft. Felton (Nat. Auto. & Cas. Ins. Co.), filed 10-10-52.
10. Marshal's Return on Bench Warrant, De Pierris, filed 10-10-52.
11. Bail Bond, Deft. DePierris (Nat. Auto. & Cas. Ins. Co.), filed 10-10-52.
12. Bill of Particulars, Motion for by Defendants, filed 11-21-52.
13. Motion Defts. to Strike and to Dismiss, filed 11-24-52.
14. Motion Defts. to Suppress Evidence, filed 12-6-52.
15. Filed Motion Defendants for Continuance, filed 12-12-52.
16. Filed Withdrawal of Attorneys, May 1, 1953.
17. Praecipe, Govt. for Subpoenas, Schwier, et al., filed 4-6-54.
18. Praecipe, Govt. for Subpoenas, Huntley and Kidd, filed 4-6-54.
19. Praecipe, Govt. for Subpoenas, Ballack, et al., filed 4-6-54.
20. Praecipe, Govt. for Subpoenas, West and Turner, filed 4-6-54.
21. Marshal's Return on Subpoenas, Turner, et al., filed 4-8-54.

22. Praeipie, Govt. for Subpoena, Burdick, filed 4-8-54.

23. Marshal's Return on Subpoena, Kidd, filed 4-9-54.

24. Marshal's Return on Subpoena, filed 4-9-54.

25. Praeipie, Govt. for Subpoena, Nicolai, filed 4-21-54.

25-A. Stipulation Waiving Trial by Jury, filed 4-21-54.

26. Praeipie, Govt. for Subpoena, Riddell, filed 4-21-54.

26-A. Motion Defts. for Dismissal, filed 4-21-54.

27. Marshal's Return on Subpoena, Ballack (Unexecuted), filed 4-22-54.

28. Marshal's Return on Subpoena, Whittall, filed 4-22-54.

29. Marshal's Return on Subpoena, Riddell, filed 4-22-54.

30. Marshal's Return on Subpoena, Nicolai, filed 4-23-54.

31. Motion Defts. to Extend Time for Settlement and Signing of Special Findings of Fact and Sentence, filed 5-3-54.

32. Transcript of Proceedings at Trial, filed 5-11-54.

33. Request for Special Findings of Fact by Defendants, filed 5-17-54.

34. Special Findings of Fact, filed 5-17-54.

35. General Finding and Special Findings of Fact, filed 5-17-54.

36. Judgment and Sentence and Commitment, Desimone, filed 5-17-54.

37. Judgment, Sentence and Commitment, Stepich, filed 5-17-54.

38. Judgment, Sentence and Commitment, Hopkins, filed 5-17-54.

39. Judgment, Sentence and Order of Probation. Felton, filed 5-17-54.

40. Judgment, Sentence and Order of Probation, DePierris, filed 5-17-54.

41. Notice of Appeal of Defendants Desimone, Stepich and Hopkins, filed May 17, 1954.

42. Bond on Appeal, Deft. Desimone (Nat. Auto & Cas. Inc. Co.), \$2,000.00, filed 5-18-54.

43. Bond on Appeal, Deft. Stepich (Nat. Auto & Cas. Ins. Co.), \$500.00, filed May 18, 1954.

44. Bond on Appeal, Deft. Hopkins (Nat. Auto & Cas. Ins. Co.), \$500.00, filed May 18, 1954.

45. Amended Notice of Appeal, Defendants Desimone, Stepich and Hopkins, filed May 26, 1954.

46. Court Reporter's Transcript of Judgment and Sentence, Hearing, filed June 4, 1954.

47. Marshal's Return on Subpoena, Booth (unexecuted), filed 6-14-54.

I further certify the following to be a true and correct statement of all expenses, costs, fees and charges incurred in my office by or on behalf of appellants for preparation of the record on appeal in this cause, to wit:

Notice of Appeal (Joint Notice), \$5.00, and that said fee has been paid to me by attorneys for the defendants.

In Witness Whereof I have hereunto set my hand and affixed the official seal of said District Court at Seattle this 16th day of June, 1954.

[Seal] MILLARD P. THOMAS,
Clerk;

By /s/ TRUMAN EGGER,
Chief Deputy.

[Endorsed]: No. 14398. United States Court of Appeals for the Ninth Circuit. Peter Desimone, John Stepich and Harold Hopkins, Appellants, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed June 18, 1954.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

[Title of District Court and Cause.]

STIPULATION AND ORDER

It Is Hereby Agreed and Stipulated by and between counsel of record in the above-entitled cause that an order may be entered directing the Clerk of this court to transmit to the Court of Appeals for the Ninth Circuit with the record in the above-entitled cause, the original of plaintiff's Exhibits Nos. 1, 2, 3, 4, 5, and 6, and defendants' Exhibit A-1, and substitution of attorneys and appearance of substituted counsel.

Dated this 25th day of June, 1954.

/s/ CHARLES P. MORIARTY,
United States Attorney;

/s/ LEONARD WEAVER,
Assistant United States Attorney, Attorneys for
Plaintiff.

/s/ MAX R. NICOLAI,
Attorney for Defendants-Appellants Peter Desi-
mone, John Stepich and Harold Hopkins.

ORDER

It is so ordered.

Done in Open Court this 25th day of June, 1954.

/s/ JOHN C. BOWEN,
United States District Judge.

[Endorsed]: Filed June 25, 1954.

United States Court of Appeals
for the Ninth Circuit

No. 14,398

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

vs.

PETER DESIMONE, JOHN STEPICH, and
HAROLD HOPKINS,

Defendants-Appellants.

APPELLANTS' STATEMENT OF POINTS ON
WHICH THEY INTEND TO RELY ON
THE APPEAL AND APPELLANTS' DES-
IGNATION OF CONTENTS OF RECORD
ON APPEAL

Pursuant to rule 17(6) of this court, appellants state that the points on which they intend to rely are:

1. That the indictment does not state facts sufficient to constitute an offense against the United States in accordance with the provisions of Title 18, U.S.C., Sec. 371, and Title 26, U.S.C., Sec. 3253, in that the indictment is vague, uncertain, indefinite, ambiguous, and fails to advise the defendants with certainty of the crime with which they are being charged, and that because of these alleged defects, the trial court should have granted defendants' motion for dismissal of the indictment.

2. That the trial court erred in failing to grant

defendants' motion for dismissal at the conclusions of the government's case on the ground that there exists a total failure of proof establishing the crime attempted to be charged by the indictment, to wit: Conspiracy, with reference to any of the appellants. That there is a total lack of proof as to the existence of an agreement between the defendants with reference to the alleged conspiracy to violate Title 26, U.S.C., Sec. 3253.

3. That the trial court erred in admitting over proper objections plaintiff's exhibits 1, 2, 3, 4 and 5, and that the trial court erred in refusing to grant defendants' motion to strike these exhibits on the ground that the same are incompetent, irrelevant, immaterial and not binding on the defendants whose names do not appear thereon and the respective signatures on such exhibits were not proven and identified as being the signatures of any of the respective defendants and on the further ground that these exhibits constitute hearsay against the defendants whose purported signatures do not appear on such exhibits, and for the reason that these exhibits were not properly authenticated and that no authority exists for the admission of said exhibits pursuant to Title 28, U.S.C., Sec. 1733, or any other statute or common law rule of evidence. That without the admission of these exhibits there is no evidence whatsoever in the record upon which it would be possible to find the appellants guilty of conspiracy to violate Title 26, U.S.C., Sec. 3253.

4. That the trial court erred in failing to grant

defendants' motion for acquittal at the conclusion of all of the testimony on the ground of insufficiency of evidence to prove the crime charged beyond a reasonable doubt.

5. That the trial court erred in failing to grant defendants' request for specific findings of fact pursuant to Rule 23, Federal Rules of Criminal Procedure, and that the trial court erred in entering general findings and special findings not supported by the evidence and in refusing to sign the special findings of fact submitted by the defendants although such findings are supported by the evidence in the record.

6. That the trial court erred in pronouncing judgment and sentence against the appellants for the reasons given under points 1, 2 and 3 herein principally on the ground that the indictment does not state a crime, and that there was a total lack of evidence to prove an agreement to conspire on the part of these appealing defendants, particularly if the inadmissible evidence referred to under point 3 hereof be not taken into consideration.

Pursuant to Rule 17(6) of this court and pursuant to Rule 39(b)(1) of the Federal Rules of Criminal Procedure, the appellants above named hereby designate as the contents of the record on appeal the complete record and all the proceedings and evidence in the above-entitled action. Appellants designate the parts of the record hereinafter listed and detailed as being all of the record material to the consideration of this appeal, namely:

1. Indictment, filed Sept. 26, 1952.
2. Bill of Particulars, Motion for by Defendants, filed 11-21-52.
3. Motion, Defts., to Strike and to Dismiss, filed 11-24-52.
4. Motion, Defts., to Suppress Evidence, filed 12-6-52.
5. Stipulation Waiving Trial by Jury, filed 4-21-54.
6. Motion, Defts., for Dismissal, filed 4-21-54.
7. Motion, Defts., to Extend Time for Settlement and Signing of Special Findings of Fact and Sentence, filed 5-3-54.
8. Transcript of Proceedings at Trial, filed 5-11-54.
9. Request for Special Findings of Fact by Defendants, filed 5-17-54.
10. Special Findings of Fact, filed 5-17-54.
11. General Finding and Special Findings of Fact, filed 5-17-54.
12. Judgment and Sentence and Commitment, Desimone, filed 5-17-54.
13. Judgment, Sentence and Commitment, Stepich, filed 5-17-54.
14. Judgment, Sentence and Commitment, Hopkins, filed 5-17-54.
15. Judgment, Sentence and Order of Probation, Felton, filed 5-17-54.
16. Judgment, Sentence and Order of Probation, DePierris, filed 5-17-54.
17. Notice of Appeal of Defendants Desimone, Stepich and Hopkins, filed May 17, 1954.

18. Bond on Appeal, Deft. Desimone, Nat. Auto & Cas. Ins. Co. (\$2,000.00), filed 5-18-54.
19. Bond on Appeal., Deft. Stepich (Nat. Auto & Cas. Ins. Co.), \$500.00, filed May 18, 1954.
20. Bond on Appeal, Deft. Hopkins (Nat. Auto & Cas. Ins. Co.), \$500.00, filed May 18, 1954.
21. Amended Notice of Appeal, Defendants Desimone, Stepich and Hopkins, filed May 26, 1954.
22. Court Reporter's Transcript of Judgment and Sentence Hearing, filed June 4, 1954.
23. Stipulation and Order Transmitting Original Exhibits, filed June 25, 1954.
24. Plaintiff Exhibits Nos. 1, 2, 3, 4, 5 and 6, and defendants' Exhibit A-1.
25. Appellants' Statement on Points on Which They Intend to Rely, and Designation of Contents of Record on Appeal.
26. Clerk's Certificate.

/s/ MAX R. NICOLAI,
Attorney for Appellants, Peter Desimone, John
Stepich and Harold Hopkins.

Copy received.

[Endorsed]: Filed July 23. 1954.

